

Public law working group:
adoption sub-group



ADOPTION



ADOPTION



Recommendations for best practice in
respect of adoption: interim report

September 2023

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What we are asking

This is an interim report that we have prepared for the purposes of consultation. There are five core consultation questions, which are on [pp16-17](#). The consultation period will open on 26 September and close on 30 November 2023. The recommendations at the heart of this report are contained at the end of each chapter. For more information about how to respond to the consultation, please see the accompanying launch email.

Acknowledgements

This report could not have been written without the assistance of those who work in the fields of child protection, adoption and family justice.

First and foremost, we wish to thank each of the sub-groups of this committee who put such a lot of work into researching and writing the individual chapters of this report. A glance at the list of those on each group shows the range of expertise that was made available to us, which has been of the greatest of assistance in this very important and sensitive area. Many of the individuals have also been involved in other aspects of the work of the Public Law Working Group.

We were fortunate to have the assistance of Moira Smyth KC and Louise Murphy of the Bar of Northern Ireland who were able to speak to their experience of contact and adoption and also Professor Elsbeth Neil and Professor Julie Selwyn CBE who have conducted so much research into the system as a whole, and to Dr. John Simmonds OBE. The report could not have been published without the advice and assistance of Alexander Laing, for which we are hugely grateful. Thank you also to Paige Campbell and Adam Kayani for their assistance in the preparation of the report.

Finally, we wish to acknowledge the contribution of Alan Inglis, a much valued friend and member of the group, who died in August 2023. He will be sorely missed.

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Glossary

ACA 2002	Adoption and Children Act 2002
CA 1989	Children Act 1989
Cafcass	Child and Family Court Advisory and Support Service and Child and Family Court Advisory and Support Service Cymru
DfE	Department for Education
DFJ	designated family judge
FGC	family group conference
IRO	independent reviewing officer
SG	special guardian
SGO	special guardianship order
SSW-b(W)A 2014	Social Services and Well-being (Wales) Act 2014

Introduction

1. In 2020 the President of the Family Division asked me to chair an adoption subgroup of the Public Law Working Group to consider the current legal process for the making of adoption orders in England and Wales and whether any reforms or changes are necessary to make it efficient and fit for purpose. The overall PLWG is chaired by Mr. Justice Keehan and I am very grateful to him for his assistance.
2. We invited specialists in adoption from all areas and disciplines to join our group. This therefore consisted of academics, social workers, Cafcass and Cafcass Cymru, solicitors, barristers, judges from England and Wales, Scotland and Northern Ireland and Family Rights Group. We were extremely fortunate to have such distinguished and experienced individuals to assist in the formulation and writing of the report.
3. At an early stage we decided that there were five distinct areas which we wished to consider: international adoptions, consensual adoption, access to adoption records, processes and procedures in court, and contact. Each group has contributed a chapter to this report.
4. [The Adoption Act 1926](#) created a legislative framework for the making of adoption orders for children that were being cared for outside their direct birth family. Further Adoption Acts followed in 1950, 1958, 1976 and 2002.
5. The original model for adoption was of children who were born illegitimate, or to impoverished or young parents, being relinquished at birth to be placed with more financially and socially secure childless married couples. The word 'relinquished' is somewhat of a misnomer, with many women being forced by their families and others to give up their babies because of the shame of giving birth when unmarried.

6. The number of adoptions in England and Wales peaked at about 25,000 in the late 1960s. The majority were babies. By 2010 the numbers of adoption orders had fallen below 5,000, most having been removed from their birth parents because of a risk of abuse or neglect. In 2022 the number of children adopted from care was 2,950 which was a small rise on the previous year (2,870) which had been affected by the pandemic. The fall in the number of adoption orders has been mirrored by a rise in special guardianship orders, normally in favour of wider family members.
7. There remains a small number of cases where babies are relinquished for adoption, often with the birth mother (and sometimes father) asking for the adoption to be kept secret from wider family members. There are also a number of step-parent adoptions and international adoptions.
8. The model of adoption has therefore changed over the last sixty years. Originally adoptions were shrouded in secrecy and sometimes adopted children themselves were not told. Now most children are adopted from care, and it is good practice for them to be told about their birth origins and to have life story work. Most will have pictures of their birth family. There are arrangements in place for adopted individuals to have access to some of their birth and/or adoption records. The importance of identity to each human being is much better understood than it once was.
9. Whilst there are children who cannot be safely cared for within their birth family we consider that there will continue to be a need for the security and permanence that an adoption order brings with it. As Ormerod LJ said in *Re H (Adoption: Parental Agreement)* [1982] 3 FLR 386;

“What do the adoptive parents gain by an adoption order over and above what they have got already on a long-term fostering basis? ...To that the answer is always the same – and it is a good one – adoption gives us total security and makes the child part of our family and places us in parental control

of the child; long-term fostering leaves us exposed to changes of view of the local authority, it leaves us exposed to applications, and so on by the natural parent. That is a perfectly sensible and reasonable approach; it is far from being only an emotive one”.

10. Whilst special guardianship orders allow those in whose favour the order is made to override the parental responsibility of the parents, the parents can still make an application for leave to apply for a ‘lives with’ order and, as of right, for child arrangements.
11. In September 2022 the *Consortium of Voluntary Adoption Agencies* published a [report](#) which concluded that, for the right children, adoption bestows lifelong benefits. Work was needed, the report said, on the importance of maintaining significant early relationships and access to support for children, adoptive and birth families. This should provide the impetus to modernise adoption rather than to stop recommending it. An article by leading international academics in 2019 made the same powerful point.¹
12. Adoption has managed to adapt and change throughout the years and we consider it important that it continues to do so. First and foremost, we recommend that there needs to be a greater focus on the issue of contact with the birth family as long as it is safe and for adopted adults to have more straightforward access to their records. Secondly, when the court is considering whether or not adoption is in the best interests of a child, the process needs to be concluded without undue delay. This applies also to babies who are being relinquished for adoption. Finally, and equally importantly, the process for international adoption needs simplification and clarification.

¹ Palacios, J., Brodzinsky, D. M., Johnson, D. E., Martinez-Mora, L., Selwyn, J., Adroher, S., Grotevant, H. D., Juffer, F., Muhamedrahimov, R. J., Simmonds, J., & Tarren-Sweeney, M. (2019). Adoption in the service of child protection: an international interdisciplinary perspective. *Psychology, Public Policy, and Law*, 25(2), 57-72.

13. There are many recommendations in this report, and some will be easier to implement than others. We welcome the views of others and further discussion about this extremely important issue.

The Honourable Mrs. Justice Judd

September 2023

Executive summary

14. This report is divided into five chapters covering the fields of adoption and contact with birth families, access to records, practice and procedure in placement and adoption applications, adoptions with an international element, and adoption by consent.
15. Given the wide range of issues considered in the report, there are a lot of recommendations. At one end of the scale, some recommendations relate to major policy issues, such as contact with birth parents, access to records, the rights of parents to challenge adoption applications after the making of a placement order; and others, at the other end, to the granular detail of the application process, whether that is within domestic or international adoption. Many recommendations stand between these two extremes. The level of detail in some of the chapters has led to some density of reading material, but we hope that this will not lessen their impact.
16. [Chapter 1](#) is concerned with adoption and contact. Whilst there has been a great deal of research in recent years as to the potential advantages to adopted children of maintaining some sort of face-to-face contact with the birth family, it remains unusual for the care plan for children who are going to be placed for adoption to propose more than indirect or letterbox contact. *The House of Lords Children and Families Act 2014 Committee*, which [reported in December 2022](#), concluded that the current system of letterbox contact was outdated and warned that the failure to modernise contact threatened to undermine the adoption system. The group suggests a change in social work practice and training for all involved in the process (including prospective adopters) to give more focus to contact and the benefits that it can bring for many (although not all) adopted children.

17. In coming to their recommendations the group was very much assisted by input from lawyers practising in Northern Ireland and also from Professor Elsbeth Neil and Professor Julie Selwyn. The group also recommends greater support and counselling for birth parents and that the full range of contact options, including digital options, should be actively considered by the professionals and the court during care and placement proceedings. We do not suggest that contact orders should routinely be made in the face of opposition from adoptive parents, whether at the time of the adoption itself or later, but it is believed that opposition is much less likely where adoptive parents are given a thorough understanding of the child's needs right at the start and are given the right support. The statutory framework for making contact orders has existed for many years, but the decisions of the Court of Appeal make clear that making contact orders in the face of opposition from adoptive parents should happen only rarely.
18. In [chapter 2](#) we turn to consider access to records. Although it is a separate topic the theme, which relates to the importance of identity to those who are adopted and their families, is very much the same. Being able to access records in a timely way is of huge significance to adopted people and their families, both in this country and abroad, and it has been very difficult for the courts and statutory agencies to keep pace with the number of requests that are being made. There is a different regime for adoptions that took place before 29 December 2005 and afterwards. Applications can be made to a variety of agencies, including the court.
19. A survey conducted by the group identified an increase in demand everywhere and variable responses in different parts of the country. Fortunately Professor Elsbeth Neil, Dr. Julia Feast, Dr. Mary Beek and Leonie Jordan of the *University of East Anglia* are leading a project which intends to identify and address barriers to training and support services for adults affected by adoption, which is likely to focus on these matters in greater depth than we have been able to do in this report, but in making our recommendations we have been greatly assisted by

discussions with them. The issue of how to deal with applications to court is something that will need to be addressed as a matter of urgency as there is concern amongst judges as to what principles to apply to court applications and inconsistencies between courts as to how they are processed. We have recommended that there should be a national protocol providing for a standard procedure for applications, with a template application form and statement. We have also suggested that further guidance as to the exercise of the court's discretion on an application for disclosure would be very welcome.

20. [Chapter 3](#) lies at the heart of the report and is the one which is most concerned with the granular detail involved in applications for placement and adoption orders. As with the other chapters, this has benefited greatly from the range and depth of experience the members of the group. There are a lot of detailed recommendations in this chapter which are designed to make the process work better and to limit delays and mistakes which can be so detrimental to children who (if they have been the subject of care proceedings) have a compelling need for security and stability. The recommendations range from suggestions as to the content of Annex A and B reports, what documents should be filed upon the issue of proceedings, what information to be given to birth parents and the development of a National Protocol to be devised setting out training and information materials for use by all agencies.

21. At the same time we invite consideration so to whether there should be any changes to the law as to the rights of birth parents to apply for leave to oppose the making of an adoption order (including as to what additional support would assist birth parents in understanding the process and their chances of successfully applying for leave), and whether to retain the practice of holding celebration visits. New legal aid regulations provide for birth parents to be able to obtain legal representation for applications within adoption or stand-alone placement order

applications, and this may be sufficient to limit the number of applications in cases where there is no realistic prospect of success.

22. [Chapter 4](#) concerns adoptions with an international element. Whilst we perceive that the number of such applications is rising, they still form a small proportion of the whole. The current system is extremely complex, as is apparent from the number of statutes and statutory instruments that govern the process, which makes things very difficult for those professionals who are involved and also for lawyers and judges. This leads to misunderstandings and delays, to the detriment of children, and so our overarching recommendation is that the statutory framework should be rewritten so that it is contained in one single Act of Parliament and subsidiary regulations. We appreciate, however that this will not occur overnight and must remain a medium or long-term aim. In order to address things more urgently we recommend that there should be better written guidance from the *DfE* and Welsh Government for inter-country adoptions of all types. There is a tendency for local authorities, in particular, not to provide legal representation for social workers dealing with incoming international adoptions, which should be reviewed. Ideally legal aid should be available for prospective adopters, albeit on a means tested basis. Sometimes the first time that a lawyer becomes involved in an incoming international adoption is when the child is joined as a party and a Cafcass Guardian is appointed and it is not uncommon for deficits in the process to come to light only at that stage, causing delay. There is also a concern that a lack of legal oversight could lead to mistakes being made, or important checks and balances being overlooked.

23. Finally in [chapter 5](#) we look at adoption by consent. Straightaway, we recognise that this description was given to many adoptions which took place in past decades when in fact many of the birth mothers concerned came under such societal pressure to relinquish their babies that they had no choice at all. What happened in the past casts a long shadow and throws sharp focus on the need to

support birth parents to make the right decisions for them and their baby. These days many such cases involve women who did not realise they were pregnant until a late stage and who are suffering very significant distress. Like many adoptions, the actual numbers concerned are not high but the importance to individuals and society at large is. We recommend that the various agencies (the *National Adoption Service* in Wales, the *Regional Adoption Agencies* in England, Cafcass and *Cafcass Cymru*) should develop a national strategy for such cases and training. Each agency needs to establish a plan that ensures all who deal with such cases are fully up to date with policy, the law and local resources. Early permanence placements should be considered. We also recommend better access to legal advice for the parent(s) before the birth and that local authorities bring proceedings straight away so that issues such as informing the birth father and/or other family members can be swiftly considered. There needs to be better communication with the court and an understanding that such cases need to be listed as a matter of urgency.

The consultation

24. The consultation will open on 26 September and close on 30 November 2023.

We encourage all those concerned with the family justice system, and all those interested in the welfare of children and young people, to take part in the consultation. We ask for your view on the following matters but do, of course, welcome more general views on the nature and use of adoption orders, and the various issues raised in this report:

- i. What approach should be taken to adoption and contact?
 - Do you agree with the recommendations in [Chapter 1](#)?
 - Do you have any other proposals?
 - In particular, what should any best practice guidance contain?
- ii. In respect of access to records:
 - Do you agree with the [recommendations](#)?
 - Do you have any other proposals?
 - What further public information is required?
 - How should applications to court be approached?
 - Should there be a national protocol?
- iii. Placement and adoption orders:
 - What final recommendations should be made in respect of leave to oppose adoption orders applications?
 - What changes, if any, should be made to the core documentation and reports?
- iv. Adoption with an international element
 - Do you agree with the [recommendations](#)?
 - Do you have any other proposals?
 - What should be the focus of any written guidance provided?
 - What, if any, amendments should be proposed to the primary and secondary legislation?

v. Adoption by consent:

- What the should be the focus of any national strategy and training?
- Do the consent forms require simplification?

Chapter 1: Adoption and contact

25. In the course of this chapter, we set out a variety of recommendations aimed at making post-adoption contact a more fulfilling and helpful experience for the adopted child. Our main recommendation is that there should be a tailor-made approach to the issue of contact for each adopted child which includes and promotes face-to-face contact with important individuals in that child's life if it can be safely achieved. The issue of contact needs to be actively considered throughout the child's minority, not only before the adoption order is made. The other recommendations are intended to support this overarching aim.

Approach

26. We framed the issue for this chapter as follows: *"How can we achieve the best outcomes for adopted children with respect to contact."* We considered this against three distinct stages of the adoption process:

- i. Before any application is made for adoption: *"the preparation stage."*
- ii. While the placement/adoption application is before the court: *"the court stage"*.
- iii. After an adoption order is made: *"the post-adoption stage"*.

27. Within each of these stages we sought to consider the issue from the perspective of the following groups:

- i. The birth family including siblings, parents and extended family members.
- ii. Prospective adopters.
- iii. The subject child.
- iv. Professionals working in the field.

Background and history

28. Until the 1970s adoption largely involved the relinquishing of young babies by a parent or parents with no expectation of any future contact. Children placed under this arrangement were usually very young and had no attachment or memory of their birth family. The stigma attached to illegitimacy and infertility meant that the decision not to promote contact was considered to be a protective factor for the adopter, the adopted child and the birth family. There was little call for post-adoption contact.
29. Changes in social norms, such as the acceptance of non-marital births and support for single-parent families, brought a significant reduction in such placements and it is now far less frequent for a child to be relinquished for adoption. By the 1970s adoption was being promoted as a route out of the care system, leading to a different demographic of children being available for adoption. These children were often older and had some memory of their life before adoption. The model of closed adoption no longer appeared appropriate.
30. At the same time, research was beginning to highlight that closed adoptions might raise some significant disadvantages. There were concerns that it might lead to difficulties in the adopted person making sense of their identity, greater anxiety among the adoptive family about the possible risks posed by the birth family and problems with the birth family coming to terms with their loss. However, there was no specific duty within the [Adoption Act 1976](#) (the act which legislated for adoption until 2005) for a court to promote or even consider contact between the adopted child and the birth family post adoption. While conditions of contact *could* be added, they were extremely rare, especially where an adopter did not consent.

31. The [Children Act 1989](#), which came into effect in 1991, raised a duty to promote and maintain reasonable contact between a child in care and their birth family, subject to the child's welfare: [section 34](#). While there was no corresponding change to adoption law at this stage, there was a clear and growing divide between the two approaches which did not go unnoticed.
32. The advent of the [Adoption and Children Act 2002](#), implemented in 2005, led to a clear requirement that the issue of contact be considered before an adoption order was made: [section 46 \(6\)](#). However, there is still no duty to promote contact to correspond with that set out in the Children Act for children in care.
33. In 2012-2013 the [House Of Lords Select Committee on Adoption Legislation](#) reported the following in respect of post adoption contact:

254. *The Adoption and Children Act 2002 sought to address issues of contact in recognition of the fact children were much older at adoption than had previously been the case, and therefore were more likely to have established links to their birth families. Sections [26](#) and [27](#) of the Act place a duty on the court to consider contact arrangements for birth families and their children when making a placement order; [section 46 \(6\)](#) comprises a duty to consider such arrangements when an adoption order is made. The intention is for contact arrangements to be agreed by the parties. If agreement is not possible, an application can be made to the court for a contact order; it is unusual for the court to make such an order, especially against the wishes of adoptive parents.*

255. *Contact arrangements with birth parents are usually indirect rather than face-to-face [BAAF, written evidence]. Many families participate in 'letter-box contact', once or twice a year, which involves exchanging information between the adoptive family and the birth parents. This contact is usually facilitated by the adoption agency to protect the identity and location of the adoptive family. Direct contact with birth parents is rare; it occurs more often with siblings [BAAF, written evidence].*
256. *The evidence we received did not suggest that change was required to the legislative framework. As with much of the Adoption and Children Act 2002 witnesses had concerns in relation to practice, but not in relation to the legislation. The principal concern was about understanding the purpose of contact. Sue Berelowitz, the Deputy Children's Commissioner, told us that decisions about contact needed "to be based on what is right for this individual child, rather than blanket decisions being made that this is always the right thing to do."*
257. *It was important to remember that contact should be for the benefit of the child, not for the parents or other relatives. The reasons why a child might benefit from contact were spelled out in evidence from After Adoption: "it is not about maintenance of the relationships as they were with the birth family . . . what [children] like is to have some continuity that enables them to integrate the past with the present, and obviously then the future. I think contact can play a very useful role for the child in helping them understand their world and their life history."*

258. *Helen Oakwater described the role that facilitated contact could play in assisting a child to “integrate their past, allowing them to form a coherent narrative and more robust sense of self.” Life-story work, the practice of sharing with a child, in an age-appropriate manner, the reasons why they were adopted, was considered another important part of creating that narrative. It could also help to manage children’s expectations of contact.*

259. *The role and impact of social media in making unauthorised contact possible, whether initiated by the birth family or the child, was mentioned in several submissions. There was concern about the potential for such contact to “jeopardise the security of the placement.” BAAF reported that there were many cases where this had “severely disrupted existing placements, caused profound upset and disturbance and put children at risk.” There was, however, general agreement that legislation did not provide a suitable remedy. It was suggested that this was most effectively dealt with by communication and openness between adoptive parents and their children.”*

34. [Section 9 of The Children and Families Act 2014](#) provided a further legislative framework for post-adoption contact with the insertion of [section 51A](#) into the Adoption and Children Act 2002. However, there is little reported case-law to suggest that these provisions are being actively used (see [appendix A](#): table of post-adoption case-law, prepared by Sharon Segal) and anecdotal experience suggests that these provisions are rarely employed. Furthermore, indirect and letterbox contact remains the predominant contact provision post adoption in England and Wales.

35. The value of adoption to society as a whole has been acknowledged in recent research projects such as that carried out by the *Consortium of Voluntary*

Adoptions Agencies and [reported in November 2022](#).² However, there is a growing understanding of the urgent need for reform. The *House of Lords Children and Families Act 2014 Committee* which [reported in December 2022](#) concluded *“Contact, where safe, appropriate and properly managed, can be valuable for an adoptive child, their new family and their birth family, including siblings and other relatives. However, contact orders and support can vary, and the current system of letterbox contact is outdated. **The failure to modernise contact threatens to undermine the adoption system.**”*³

36. In lectures given in 2017 and 2019, Sir Andrew McFarlane, the President of the Family Division, commended the research of Professor Elsbeth Neil and others at the University of East Anglia about contact with birth families following adoption. He also recommended a book edited by Joanne Alper, entitled *Supporting Birth Parents whose Children have been Adopted*, which identified the benefit to birth parents and the adopted child of providing counselling and support to parents after the adoption process had been concluded.

37. In the 2019 lecture, which was given at a *Coram BAAF* conference, the President outlined the reasoning of the Court of Appeal in the case of *Re B (A Child)(Post Adoption Contact)* [2019] EWCA Civ 29 where he gave the lead judgment. The headline point from the case, as he described it, was that it reaffirmed the previous approach that *‘the imposition on prospective adopters of orders for contact with which they were not in agreement is extremely, and remains, unusual.’* He explained that the view of the court was that the insertion of s51A into the Adoption and Children Act 2002 did not intend to vary the approach to be taken as to imposing contact on unwilling adopters, but on the contrary, to enhance the position of adopters rather than the contrary, as the only order the court was

² [“ A home for me? A comparative review of the value of different forms of permanence for children – Adoption, SGO’s and Fostering.”](#)

³ <https://publications.parliament.uk/pa/ld5803/ldselect/ldchifam/100/100.pdf> Emphasis added.

empowered to make of its own motion was to prohibit contact. The introduction of s51A and the development of understanding through research of the importance of post adoption contact were not linked.

38. The message that Sir Andrew gave was that any move towards greater openness and flexibility in post-adoption contact must come on a case-by-case basis, in a manner that brings prospective adopters along on a consensual basis. At each stage the court must give consideration to the issue of long-term contact, relying on advice from well-informed social workers and guardians as to the benefits (or otherwise) of contact in the particular case. He stated that, at the placement order stage, the court had the opportunity to set the tone for contact but it must be realised that, unless the prospective adopters were in agreement or the circumstances were very unusual, it would be unlikely that an order would be made at a later stage.

39. Although the message then and now was that the development of face-to-face contact with the birth family after adoption should come about by means of greater education, understanding and support for all involved, rather than judicial coercion, in practical terms post-adoption contact for adopted children has moved on very little since the report of the select committee almost ten years ago.

Research

40. A range of research was disseminated and considered during the course of our discussions.

41. The contributions of both Elsbeth Neil and Julie Selwyn were invaluable in respect of the exceptional work they have undertaken over decades in this field but also in signposting us to other relevant research.

42. Through Julie Selwyn we were able to access recent research undertaken in Australia around the outcomes of post adoption contact.

43. The National Adoption Service for Wales has developed and published a series of [Good Practice Guides](#), supported by AFKA Cymru, which were provided by Tracy Dunning and were a useful reference point for good practice nationwide.
44. During the latter stages of our discussions it became clear that it would be useful to get a practitioner's perspective from Northern Ireland, where the experience is that post adoption contact plans are, more often than not, drawn up to make provision for direct contact with birth parents and/or siblings. Moira Smyth KC and Louise Murphy gave invaluable insight to the group as to the practical situation, answering our queries over a number of meetings and providing us with the relevant case-law and pro formas used in Northern Ireland. Their input has had an enormous effect on the recommendations that form part of this report.
45. We were also able to make use of the expertise of Sarah Johal, thanks to Julie Selwyn, who provided us with information around the digital platform for 'letterbox' contact which is currently being rolled out.
46. While we have mentioned specific contributions above, it is right to acknowledge that *all* members of this subgroup have been instrumental to the recommendations of this report in the contribution of their thoughts and ideas and the giving of their time.
47. We do not repeat the research here. We do however set out some of the issues which were influential in our thinking:
- i. There is considerable evidence that transparency and openness around the circumstances and experiences of the adoptee's birth family is beneficial to an adopted child.
 - ii. The purpose of contact post-adoption is for the adoptee about enabling a process to help them understand their experiences and develop a sense of identity. Existing relationships with birth parents must change to take into account their different role as a result of the legal process of adoption.
 - iii. Separating siblings can lead to an enduring sense of loss.

- iv. There are strong indications that face-to-face contact helps adoptees develop a sense of identity, accept the reasons why they were adopted and move forward with their lives.⁴
- a) However, ensuring that contact is safe for the child is pivotal to positive outcomes.⁵
 - b) Communication with and understanding from the parties involved in contact (birth parents or other relatives/adoptees/adopters) is an important component in its success.
 - c) Despite the research indicating the benefits of face-to-face contact, where it can be safely managed, the overwhelming majority of cases continue to recommend only letterbox contact. Where direct contact does occur it often happens without any formal agreement being in place.
 - d) Letterbox contact can prove problematic. A high number of arrangements stall as a result of one (or both) parties failing to maintain the arrangement. This leaves many adoptees without any effective contact from birth families.
 - e) The experience in Northern Ireland tends to suggest that a shift in mindset by professionals involved in the process of adoption and strong guidance from the judiciary can bring about a change in approach to post adoption contact without the need for changes in primary legislation.

48. Considering the research is so pivotal in this field, we wondered how well it is disseminated to those involved in the process of adoption, not just prospective adopters and birth parents but also to social work practitioners and lawyers

⁴ Outcomes of open adoption from care: an Australian contribution to an international debate. Ward, Moggach, Tregagle, Trivedi. (UK research Neil et al 2015 comes to the same conclusions)

⁵ We acknowledge that support services to manage post-adoption contact are inconsistent and sometimes inadequate. However, agencies have a duty to maintain a service to support contact and those involved in adoption may request assessment of need in relations to services to maintain contact at any point. This may include mediation or other support services to maintain or support contact. Attempts should be made to ensure consistency of support nationwide.

representing parties to care and placement proceedings. We could find no minimum national standard of training for prospective adopters (save for that adopted in Wales) and the availability of research to practitioners of all fields requires an element of private study and exploration that is not always possible.

49. Disseminating the results of the extensive research in this area seemed to us an important first step, so that all approach the concept of post adoption with a clear and realistic outlook. The position of the birth family needs to be addressed: birth parents may find it hard to engage in conversations around post-adoption contact at a time when they may be contesting proceedings and seeking the return of their child. Support counselling and guidance for them needs to be carefully thought out and should be available not just before and during proceedings but after the decision is made, and once they have had time to process their situation. Birth parents or other members of the birth family may be less fixed in their views and more emotionally accepting over time.

50. In the same way, the views of adopters around post-adoption contact may change over time. Contact plans are almost always voluntary and a good understanding of why such contact is necessary better enables them to commit to the plan. An adopter's commitment to post-adoption contact may be very high immediately after training but may fluctuate for any number of reasons. Access to training and education for them should be available at all stages of the process including after the order is made. The general recommendations we make seek to encompass these issues.

51. The learning from Northern Ireland seems to underline the need to place the issue of contact post-adoption at the forefront of the court's consideration when placement orders are sought. Robust consideration of all the options is pivotal to ensuring that the adoptee has the best plan post adoption. We acknowledge that direct contact is not appropriate in all cases. We note and endorse the comments made in the report of the *House of Lords Committee*: "We need a flexible,

intuitive, meaningful, (non?) risk averse but appropriately safe system that allows for meaningful support for lifelong contact with safe members of birth families.”

This requires, at the same time, a change in emphasis by social work practitioners, children’s guardians and judges when thinking about post adoption contact. The role of the adoption worker here is key. Should post-adoption face-to-face contact be recommended, they will need to work with the families to monitor and recalibrate where necessary. They may need to re-evaluate the birth family’s ability to participate in contact or the adoptive family’s ability to support it, on an on-going basis. They will need to formulate the ‘rules’ around contact and manage expectations. The recommendations set out below bring the adoption worker’s role forward so that they are actively involved at the time of the proceedings in readiness for their role in managing future contact arrangements. What is very clear is that the change of approach needs to be coordinated so that *all* parties are working within a new set of expectations around post adoption contact. Anything less is unlikely to bring about the wholesale change in the manner in which post adoption contact is managed.

52. Finally, we considered the digital innovations in respect of post-adoption contact. [‘Letterswap’](#) and [‘ARCBOX’](#) are two of the digital platforms currently being piloted to consider an electronic exchange of letters between adoptive family and birth family. *ARCBOX* is a life story digital platform for looked-after children, where the child can access the app, which has funding to research an expansion of the application to support post adoption contact. These innovations are in the early stages and have the potential to have a positive impact on contact practice. Careful consideration will need to be given to their use including whether they replace or run alongside traditional letterbox contact, how far they may inadvertently exclude birth parents who do not have access to or expertise in technology and whether the adoption regulations may need to be amended to enable the mainstream use of these platforms. A relevant innovation that may

assist in this sphere is that the charity, [Family Rights Group](#), are exploring, with stakeholders, how their Lifelong Links approach, designed safely to build meaningful relationships for children in care and help them have a stronger sense of identity, could be tailored to assist adopted children

General recommendations

53. **There needs to be a sea change in the approach to the question of face-to-face contact between the adopted child and the birth family or other significant individuals.** Greater consideration needs to be given, throughout the child's minority, as to whether they should have face to face contact with those who were significant to them before they were adopted. It is recognised that this will not be safe for all adopted children, but the current system whereby face-to-face contact is the exception rather than the rule is outdated.
54. **There should be consistent training for prospective adopters throughout England and Wales.**⁶ There should be consistency of message throughout England and Wales, irrespective of whether adopters are trained by voluntary adoption agencies or regional adoption agencies. The training needs to place at its core the lifelong adoption related needs of adopted people, in relation to their sense of identity and loss in respect of their birth family connections, and the importance of open communication and birth family contact (direct and indirect) in helping to meet these needs. Training should include the outcome of research and the voices of adopted people, adoptive parents, birth parents, siblings and other members of the birth family setting out their feelings on contact.
55. **There should be on-going training for social work practitioners and lawyers as to the benefits of open adoption.** Social work practitioners, lawyers and members of the judiciary who work within the field of adoption should undergo

⁶ Required by [Adoption Minimum Standards in England](#), para 8.3.

regular training which emphasises the research outcomes of post-adoption contact and places at its core the lifelong adoption related needs of adopted people in relation to their sense of identity and loss in respect of their birth family connections and the importance of open communication and birth family contact (direct and indirect) in helping to meet these needs.

Training should include the outcome of research and the voices of adopted people, adoptive parents, birth parents, siblings and other members of the birth family setting out their feelings on contact.⁷

56. Birth parents should be signposted to independent support⁸ which can provide support workers to enable birth parents to understand how they can continue to be involved in their child's life through different types of contact as soon as adoption is identified as a possible outcome. Support, counselling and guidance to birth parents and their role in post adoption contact is crucial to the success of the process. This is already a requirement under the ACA 2002 to support⁹ from someone other than the child's social worker but its availability should be emphasised and promoted.¹⁰ Birth parents are given access to and should be actively encouraged to use a support worker who is not the child's social worker from the time adoption is identified as a plan for the child. Adoption

⁷ In respect of training for practitioners we are aware that the PLWG rolled out standardised training (not related to post adoption contact) which was accessible through LFJBs, FLBA, Resolutions, The Law Society and ALC. It may be that similar provision could be used in this instance.

⁸ [FRG](#) is an example, though it provides information in the main rather than on-going support. [PAUSE](#) (REFLECT in Wales) may provide support in more limited circumstances (i.e., not for loss of a first child and not for fathers). Other providers are also available. If there is a lack of availability, adoption agencies should look to commission these services which are specified within [Adoption Minimum Standards](#), para 12.3. In Wales the [Good Practice Guides in Contact and Working with Birth Parents](#) place the building of relationships and open communication at the heart of the relationship with birth parents enabling a flexible approach to contact through the years.

⁹ Section [3](#) and [4](#), ACA 2002. Support includes assessment of the need for support services and a plan for support should the assessment reveal a need. This support can include support around contact including mediation services for contact arrangements between birth families and adopted children. [AA Regs, para 14](#).

¹⁰ We wonder whether in England and Wales this requirement should be monitored via the Ofsted and CiW inspection process.

agencies should be responsible for undertaking the role of signposting parents to support and that support should be on-going and easily accessible. There should be some accountability¹¹ to ensure that this service is offered: *Cafcass / Cafcass Cymru* or the court could check that such support has been offered or a further paragraph within the care plan pro forma could prompt the social worker to ensure that it has been done. The IRO may also have a role here.

57. **Care proceedings: The Adoption Agencies (Wales) Regulations 2005: [Part 3](#): duties of adoption agency where the agency is considering adoption for a child.** The regulations include a requirement to provide counselling and information for, and ascertain the wishes and feelings of, the parent or guardian of the child and others.

58. On-going support for birth parents should be available via a service offered or commissioned by regional adoption agencies (some agencies already offer this). Regional adoption agencies should ensure that there is a strong awareness amongst their staff and a clear presence on their websites or printed materials of how to access such support services. The interactive on-line map of services for birth families in England, being designed by [Family Rights Group](#) and funded by the regional adoption agency, should be a helpful new signposting resource for practitioners and families. If these services are not taken up, the provision of advice and information via an independent service may enable a birth parent to reconsider the position when they are ready. Close liaison between the regional team and [PAUSE](#) / *REFLECT* advocacy services etc may be useful to enable the regional team to gauge whether and when to reintroduce the subject to a birth parent. If services have not been taken up at the time when orders are being

¹¹ In Wales, the establishment of Performance Measures by National Adoption Service In Wales will go some way to check this.

sought, adoption agencies should make a further approach to birth parents one year after the orders are made.¹²

59. Consideration should be given to a best practice guidance¹³ which deals specifically with the approach of practitioners to post adoption contact and encompasses the recommendations set out below.

Recommendations pre-proceedings

60. Identification of those persons who are/may be important to a child should be undertaken at the Family Group Conference and during any pre-proceedings kinship assessment stage. There is already a process of identifying potential alternative carers. If this approach is expanded slightly to consider which relationships are/may be important to the child, then practitioners will have an early understanding of the child's network and of who may be able to offer a positive perspective should direct post adoption contact be considered appropriate at the end of proceedings. We are conscious that this may include a need to identify relationships which may be important in the future, especially in cases where the subject child is very young. Consideration will need to be given to those who are not considered to be immediate family members and potentially those who are not related.

61. When preparing the MANDATORY Genogram for the SWET there should be an eco-map for 'important relationships'. These relationships will have been identified as a result of the work recommended to be undertaken at the pre-proceedings stage. Important relationships will encompass those relationships

¹² For a study of birth parents support services in adoption, see <http://www.adoptionresearchinitiative.org.uk/briefs/DCSF-RBX10-05.pdf>.

¹³ BPG has already been published for Welsh local authorities which may be a helpful starting point, see: https://www.adoptcymru.com/home.php?_dds=true&fileID=462&inline=true

within the family which are or may be significant to the subject child and those individuals within the family who can provide information and news about significant family members, can reassure the child that they are remembered or can facilitate a positive contact experience. Consideration should also be given to any relationships outside the family which are important such as previous foster carers and non-biological relationships (e.g. godparents).

62. There should be specific guidance as to the prospective roles of child protection social workers and adoption social workers including a clear expectation of when they will begin liaising. We acknowledge that there is a range of practices as to the involvement of adoption social workers in the process. We think it would be helpful for early liaison with a specific named adoption social worker (at the point where adoption is within the contemplation of the local authority or the court) to enable an early exchange of information, a consultation around proposed contact plans and a smooth transition should a placement order be made.¹⁴ In addition, it ensures that a named adoption social worker has a clear understanding of the child's networks at an early stage in the event that a placement/adoption order is made and contact is recommended.

¹⁴ In Wales this is already recommended within the BPG on "[Working with Birth Parents](#)".

Recommendations for practice during proceedings

63. The full range of contact options (including digital options) should be actively considered by professionals and the court during care and placement proceedings rather than an assumption that contact will be via letterbox only.

i. For social workers this means:

- An investigation of the family members who may be able to contribute positively to contact after the subject child is adopted. The investigation which should be undertaken during the care and placement proceedings is described best in the following extract:

“The personal circumstances, wishes, and resources of birth family (and foster family) members need to be explored. Attention should be paid to considering who in the child’s existing network has something to offer in terms of providing background information or ongoing news of how significant people are doing. Who can reassure the child that they are cared about and remembered? Which individuals are most able to support the child as a member of their adoptive family? What help might birth parents need to manage adoption-related loss, anger, and shame so they can focus on their child’s needs (Neil, 2006)?”¹⁵

- An assessment of the ability of any identified person to maintain contact post adoption should be undertaken within the final care/placement order statement (potentially by the adoption social worker). This can then be referred to and reconsidered at the time the adoption order is made.
- Additional paragraphs in the final social work statement within the care and placement order proceedings, where there is a consideration of all possible forms of contact and a balancing of its welfare benefits for the subject child

¹⁵ (Neil & Beek, 2020)

against any safeguarding issues so that the social worker can provide a recommendation which meets the needs of the subject child. It should evidence that a range of possibilities have been considered in terms of what contact should consist of and with whom, and the reasons why these different types of contact are seen to be suitable or ruled out. If direct contact is not considered to be beneficial at this stage, it should recommend whether the present case is one where a reconsideration of direct contact should take place at a later stage and if so that consideration should form part of the adoption support plan.¹⁶

- Any recommendation needs to consider the potential practical arrangements, for example, if face-to-face contact is recommended, its duration, frequency and location need to be considered along with a recommendation as to the level of contact after the placement order is made but before the adoption order. If face-to-face contact is recommended, the presence of the adopters will need to be considered (in line with the research, we consider that in most but not all cases they should be present¹⁷) along with who should be present from the birth family. The birth family will need to have a clear understanding of what is expected of them and why those expectations may be helpful to them and the child.¹⁸ Those expectations can, at a later stage, form part of a written agreement

¹⁶ See below re court's use of section [26](#) and section [51A](#) ACA 2002 to ensure that consideration of contact remains dynamic.

¹⁷ Research in both Australia and UK suggests that the presence of adopters at contact meetings should be the norm in most cases.

¹⁸ In particular an acceptance that the child is a member of the adoptive family and that their role as birth parent has changed may go a long way towards ensuring that post-adoption contact remains a positive experience for all. An acceptance by the birth family that adoption was the right decision may be unachievable and is not always necessary to ensure that post-adoption contact is a positive experience.

with a clear understanding of the range of consequences of not meeting them.¹⁹

- Should letterbox contact be recommended there should be exploration of the digital platform (as it becomes more widely available) and other digital options which might better support the process of letterbox contact. At the point when the placement order is made these details may be provisional but by the time the adoption order is being considered, there should be a clear plan which has been drafted with the provisional plan in mind and has been discussed with and approved by the adopters and all parties involved in the contact.
- A renewed emphasis on post-adoption contact in the final care plan including a section setting out important relationships and the support²⁰ that might be necessary to the child, the prospective adopters and the identified birth family member to enable any contact (be it written or face to face) to be safe and meaningful. (This section of the care plan will require the input of the adoption social worker, emphasising the need for early liaison between them and the child's social worker.)
- A specific consideration of sibling contact will need to be undertaken and targeted work may need to be undertaken with the sibling(s) and their carer(s) to facilitate this. This needs to be considered within the care and placement order proceedings to ensure that there is no gap in direct contact should it be indicated.

¹⁹ Examples of contracts for birth family members supplied by Moira Smyth KC and Louise Murphy at [Appendix B](#).

²⁰ By 'support' we are referring to a wide range of possible support, both in terms of practical and emotional support from professionals and the use of resources such as contact centres to facilitate contact. The level of support required may vary from case to case and at different times in the life of the adoptee. It will need to be considered on a case by case basis. In cases where contact is "low risk' contact may be arranged without professional support making it more natural for the adoptee.

- The adoption support plan which should encompass a contact support plan should be available in draft form for consideration by the court before making a placement order. A completed adoption support plan with input from the adopters will form part of the papers available before the making of an adoption order.
 - There should be agreement between social work practitioners as to who should complete the life story work/book and the timescale for completion. This should be clear by the time the placement order is made.
- ii. For children’s guardians this may mean: The final analysis should address whether the investigation of post-adoption contact has been broad enough and should consider the welfare benefits of any recommendation made both at the stage where the placement order is being made and into the future. Amendment of the standard Cafcass / Cafcass Cymru template to include a section which looks specifically at these issues is suggested²¹.
- iii. For courts this may mean:
- Courts should consider how they can use s 26 of ACA 2002 to set out clearly the assessed needs of the child to stay in touch with relevant member of their birth beyond the point of the placement order (where prospective adopters may or may not yet be identified), particularly in cases where it would be detrimental for the child to have contact cut off at this stage. Any such orders end when the adoption order is made, but they may set the tone for what is planned will happen after the adoption order, ensure that long gaps in the planned contact do not occur, and allow for a period of time for the proposed contact to be actively supported by the adoption agency.

²¹ There may be a role for the [IRO](#) to check compliance at the stage when the adoption order is being made since, in most cases, the involvement of the Children’s Guardian will have ended by then.

“Such orders may influence the search for adopters and focus the minds of professionals, prospective adopters and birth relatives on establishing a working contact plan. This may be a useful tool where children are considered to have a compelling need for ongoing contact, helping to avoid these needs being side-lined in order to make him or her more ‘adoptable’, an outcome that is incompatible with the notion of adoption as a service for children.”²²

- Courts should consider, in the right case, the use of section [51A ACA 2002](#) which contemplates the making of a contact order now or at any time after the making of an adoption order. In some cases, that provision may be used to facilitate a review of contact by the court at a suitable time after the making of the adoption order, for example where direct contact is not appropriate at the time of the order but may be indicated at a time in the foreseeable future.²³ We recognise that imposing an order on unwilling adopters is a very serious matter, and that the decision of the Court of Appeal in *Re B* outlines the limits in which it is appropriate. If the other recommendations in this report are accepted, we hope that with greater support and training for all concerned, decisions about contact are overwhelmingly likely to be made by consent.

²² Neil, 2018.

²³ See words of McFarlane LJ at [NAGALRO Annual Conference 2018](#).

Additional recommendations

64. Adoptive parents should, as a matter of course, write a settling-in letter to the birth family.
65. Consideration should be given in every case to a meeting between the adopters and members of the birth family.
66. Later life letters from the birth family (in addition to the one prepared by the social worker) to the adopted child should be considered and timetabled²⁴ (subject to the view of the child at the stage when the letter is to be sent).
67. Life story books should be available by the time the adoption order is made²⁵ and should include reference to all those people who have been identified as important to the child.
68. Examples of post adoption agreements²⁶ and future contact plans should be drawn up and circulated nationally at this stage. They should be available to each adoption agency/local authority as a flexible pro forma which can be tailored to the specific needs of the case.²⁷
69. There should be a continued line of communication between the adoption social worker and the birth parents so that the adoption social worker can reassess the ability of a relative/other to have contact post proceedings²⁸ (this

²⁴ We appreciate that any timetabling of letters will need to be flexible for a variety of reasons.

²⁵ Regulations in England require them to be available 10 days after the making of an adoption order but adopters benefit from having them at the earliest opportunity. In Wales the NASW Performance Measures already ensure that letters and books are provided at key stages with final versions made available at the point of the Adoption Order

²⁶ We advocate the use of the word 'agreement' rather than 'contract' to denote the flexibility and collaborative approach required.

²⁷ Examples used by certain authorities in Northern Ireland are provided: [Appendix B](#).

²⁸ "When considering contact whilst court proceedings are in train, there is much uncertainty and high emotion for all parties, and this is often not the best time to make firm and lasting contact plans. Birth parents are often still fighting to keep their child and have not had time to process their loss, adoptive parents are in an insecure position and children are not yet settled. The capacity of adults to consider and enact contact plans may be much higher once the 'the dust has settled'. An expectation of the need for flexibility and to keep arrangements under review should be established from the start." Neil, 2018, Family Law.

could potentially be done at the matching process and beyond) **and to ensure support is available should any contact arrangement begin to falter.** Input from any support services accessed by the birth parent would also be helpful in this process. One suggestion (subject to consultation) is that the **adoption support plan should be available in draft form at placement order stage** and should contain a reasoned and clear position on post adoption contact. This document could be cross referenced against the final adoption support plan which will be available at the point the adoption order is made.

70. Any documents shared with prospective adopters about the birth family should be balanced in their approach. While care proceedings may focus on the failings of a birth parent, prospective adopters need to be clearly shown the positive as well as the negative aspects of parenting provided and any mitigating factors. Such a course may help them to support any future contact which has been recommended.

71. After the adoption order is made, periodic reviews of contact plans should be offered by the adoption social worker to ensure the plan is still meeting the child's needs and to consider any changes to the contact or support for contact that might be needed.²⁹

72. Exploration of use of digital platforms to enable indirect contact to be undertaken in that manner if appropriate.

73. Direct contact should be expected to continue in early permanence placements (concurrency, fostering for adoption) where it has been working well. Any obstacles should be fully explored and addressed.

²⁹ In respect of this recommendation there was a strong difference between participants as to its importance. Some felt it was extremely important and advocated a named social worker being available to birth parents throughout, others felt that it might be unfeasible to require even the level of involvement we currently recommend. [BPG](#) in Wales envisages an on-going working relationship with the birth family. In any event, birth parents and adoptive parents should be made aware of their statutory right to an assessment of need which could be used to assist them in dealing with any issues arising within post adoption contact should periodical reviews be unavailable.

74. Social workers should where necessary manage and support direct contact by helping all parties prepare for, manage and de-brief after contact attending to adult-adult interactions as well as child- adult interactions. They will need to be sensitive to the fact that trauma effects may surface after contact.³⁰ The adoptive parents should, if possible, be present during contact.
75. Adoptive and birth families should have a named worker they can approach in respect of letter box contact provisions.
76. More courts judgments to be published in full where contact has been a feature.
77. As a minimum, all siblings who are not placed together should receive the information suggested in the "Charter for Siblings" set out in Beckett's ['Beyond Together & Apart' practice guide](#).³¹

³⁰ MacDonald M (2021) Supporting face-to-face birth family contact after adoption from care: learning for trauma sensitive practice.

³¹ I know the reasons why I am not living with all my brothers and sisters. I have information and explanations in my life story book about my brothers and sisters. I have met the family who care for my brothers and sisters. I know that my family met my brothers and sisters and have photos of us all together. I receive news about my brothers and sisters and how they are doing. I have recent photos of my brothers and sisters. I know when I will see my brothers and sisters (or why I cannot see them). I know that I can talk about and ask questions about my brothers and sisters. (We acknowledge that this may only be achievable in respect of siblings with whom the adopted child had a relationship before being adopted).

Chapter 1: Appendix A: Table of post-adoption case-law

78. See accompanying PDF: *Chapter 1: Appendix A: Table of post-adoption case-law*.

Chapter 1: Appendix B: Examples of contracts for family members

SAMPLE 1

POST ADOPTION CONTACT AGREEMENT FOR:

+++++

This Agreement deals with the arrangements for contact between **+child+** his adoptive family and his birth family.

This Agreement is made in good faith by all those involved.

+Child's+ welfare will be the most important consideration at all times and their opinions about this Agreement will be sought.

It is agreed that:-

1. There will be one direct contact per year between **+child+** and his **+birth mother/father ("BP")+**. The contact will take place in a social work venue and will last for _____. The contact will be supervised by Adoption and Permanence staff and **+Adoptive Parents ("AP")+** will be present. It will take place in _____ each year. If **+BP+** wishes to give a gift to **+child+** at contact, no more than one or two gifts to the maximum value of £20 each would be appropriate.
2. A photograph will be taken by a member of staff and copies provided to **+BP+**. These photographs should not be available on social media, and if they are detected on social media, no further photographs will be provided. There will be no other photographs or videos taken during contact.
3. It is acknowledged that **+child+** will refer to **+AP+** as Mummy and Daddy, therefore during post adoption contact, **+BP+** will refer to himself by his own name.
4. **+Child's+** views will be sought prior to the contact and continuation of contact will be dependent on his wishes and feelings as well as those of **AP**.

5. It is the responsibility of BP and Adopters to get to and from contact. Travel warrants can be provided to BP for public transport use.
6. Should BP have any change in circumstances in the future this may be passed on to AP.
7. All personal care tasks for child will be undertaken by AP
8. During contact it is acceptable for BP to say to child that he loves him.
9. **Indirect contact will be implemented in the event that direct contact becomes detrimental to child's ability to form or maintain a secure attachment to his carers.** This will be assessed on an ongoing basis and will replace direct contact.
There will be one indirect contact (a card or letter) once per year. This will be sent in ___each year. The card should not be a "son", card as this would be confusing for child. BP should sign the card/letter with his own name. The card/letter will be sent to Adoption and Permanence Services who will forward it to AP There will be no replies facilitated to any further indirect contacts forwarded outside this agreement each year from either party.
10. The Post Adoption Service has an open letter policy, which means that all letters are opened and copied before being passed on. This will provide a copy in the event of the letter/card being lost. As letterbox arrangements are strictly confidential no identifying information should be passed on. If this does happen, Adoption and Permanence Team staff will give the letter writer an opportunity to re-word the letter. When an adopted child reaches the age of 18 they can access their file which will have a copy of indirect contacts.

NB The Post Adoption Service cannot accept responsibility for the failure of any party to comply with the Agreement.

AGREEMENT

I/We agree to the contact described above.

I/We agree that all actions and plans shall regard the welfare of **child** as the most important consideration.

I/We agree to inform the Post Adoption Service based at [address], should I/We have any change of address or telephone number.

I/We agree to respect **child's** wishes should he want to change the terms of this agreement at any time, consistent with his interests.

I/We agree that **AP** will act as they consider what is in **child's** best interest and that arrangements for contact will depend on their views.

(This Agreement to be signed by Adopters, Birth Relatives and Social Worker(s))

Adopters: _____

Date: _____

Date: _____

Birth Family: _____

Date: _____

Social Worker: _____

Date: _____

SAMPLE 2

Post Adoption Contact Agreement

Re:

This agreement deals with the arrangements for contact between (Child/Children) and (his/her/their) (BP) following their adoption by (AP 1st names) who will have parental responsibility for (Child/Children).

This agreement is made in good faith by all those involved.

The best interests of (Child) will be paramount at all times and their opinion about this agreement will continue to be sought as is age appropriate.

It is agreed that:

- (AP's) will facilitate (X) direct contacts each year. The contact will be for (X) hour(s). The purpose of the contact is to enhance (Child's) sense of identity and self-esteem.
- Direct contact will take place each year in (Month(s)). Some flexibility may be required should this clash with any holiday arrangements. Advance notice needs to be given of any changes to contact arrangements.
- (APs) should not be asked to share personal information about their relationship/their family circumstances.
- An appropriate venue should be identified for contact in order to optimise communication between (APs, BPs & child). With regard to cost (BP) will be responsible for any costs incurred in respect of him/herself and (APs) will be responsible for costs incurred in respect of (child).
- A Social Worker/Contact Worker will also be present at the contact in a supervisory/ support capacity.
- No other birth family members should be informed of details in relation to the arranged contact.

- The X Health and Social Care Trust Adoption Team will liaise with (Aps & BPs) to arrange a suitable time, date and venue for contact.
- The contact arrangements will be reviewed on a regular basis by X Health and Social Care Trust Adoption Team to ensure that (child's) needs are being met through the contact arrangements.
- X Trust should take photographs during contact and can provide copies for (child & BP's).
- Any photographs shared are for (BP's) personal possession. Photographs are not to be shared on social media. If photographs are shared on social media the provision of photographs will be withdrawn.
- If (child) presents as particularly distressed or unsettled for any reason, consideration may need to be given to ending the contact earlier than planned for either or both children.
- If any person in the agreement is not satisfied with the actions of another person, they should contact the contact co-ordinator directly.

I agree to the contact described above.

I agree that all actions and plans shall regard the welfare of (child) as the most important consideration.

Signed:
Birth Relative

Dated:

Signed:
Adoptive parents

Dated:

Signed:
Social Worker for X HSC Trust.

Dated:

SAMPLE 3 – INDIRECT CONTACT

Post Adoption Indirect Contact Plan

Re:

This plan deals with the arrangements for contact between (child/children) and their birth mother/father etc, (full name), following their adoption by (AP 1st names only) who have parental responsibility for them.

This plan is made in good faith by all those involved.

The best interests of (child) will be paramount at all times and their opinions about this plan will continue to be sought as is age appropriate.

It is agreed that:

- (APs) will facilitate (X) indirect contacts each year
- This written contact will take place each year in (Month(s)) via the X Trust's Post Box Service. This contact will be two way, with (APsP writing an update to (BP) in the first instance which will then be responded to by (BP).
- Any information shared about (child) must be kept in strict confidence and not shared with any other persons or posted on Social media sites.
- The contact arrangements will be reviewed on a regular basis by X Health and Social Care Trust Post Adoption Service to ensure that (child's) needs are being met through the contact arrangements.
- If any person in the plan is not satisfied with the actions of another person, they should contact the contact co-ordinator directly.

We agree to the contact described above.

We agree that all actions and plans shall regard the welfare of (child) as the most important consideration.

Signed: _____
Birth Parent

Dated:

Signed: _____
Adoptive parents

Dated:

Signed: _____
Social Worker for X HSC Trust.

Dated:

Chapter 2: Access to records

Introduction

79. The ability to obtain access to information and records about birth families is of huge significance to adopted people and their families, not only in this country but also abroad. Although the need for sensitivity is ever present, people now appreciate that the shroud of secrecy which has so often surrounded adoption can be very detrimental to the health and well-being of all involved.
80. There are numerous routes to obtaining information which are set out below. In the first instance most interested individuals will approach appropriate adoption agencies (if they know where they are). There is information available on government websites, and also on some national hub services such as [Family Connect](#) and [AdoptionSearchReunion](#).
81. Since work was started on this report, it has been announced that Professor Elsbeth Neil, Dr Julia Feast and Dr Mary Beek will be leading a project, *Improving Adoption Services for Adults: a time for change*, which is aiming to identify and address barriers to tracing and support services for adults affected by adoption. The work of this group will cover some of the ground we have covered here but in much greater detail.
82. In recent years family judges have noticed a steady increase in the number of individuals seeking access to adoption records held by the courts. There is little guidance available. In 2014, Sir James Munby, then President of the Family Division published a judgment in the case of *Re X (Adopted Child: Access to Court File* [2014] EWFC 33 which dealt with disclosure of court records relating to a pre-Adoption and Children Act 2002 adoption. In 2016 the *Justice Clerks' Society* issued a paper setting out the various routes by which information might be disclosed and the principles to be applied. This was helpful but it highlighted the

complexity surrounding the entire issue, not only so far as court records were concerned but access to adoption records generally.

83. In this report we consider what is happening now, and whether the system requires reform.

Routes to obtaining access to adoption records

84. There are various routes to obtaining access to adoption records, depending on who is making the application and the date the adoption took place. The list below is not exhaustive.

85. Adoptions which took place before 30th December 2005 (known as pre-commencement adoptions):

- i. Adults adopted before 12 November 1975 can apply to the [General Register Office](#) (GRO) for a copy of their original birth certificate. The GRO holds records of adoptions in England and Wales. It has a statutory duty to provide certain information, and holds an Adoption Contact Register which allows adopted individuals to register a wish for contact or no contact, with a birth relative, and vice versa.
- ii. An adult adopted before 12 November 1975 can access further birth family records after making a request to the GRO. The GRO provides the birth certificate and adoption agency details to allow access to the information (it does not hold or provide any other information itself). Birth parents pre-1975 were, however, assured of anonymity and original names were not generally disclosed to adopted people. Because of this, counselling is mandatory for pre-1975 applicants. The GRO will send forms to the applicant's local authority or Adoption Support Agency (ASA). The applicant can then also apply to the local authority or ASA for their adoption records.
- iii. Adults adopted between 12 November 1975 and 29 December 2005 inclusive can also apply to the GRO for a copy of their original birth entry/certificate. By

this time birth families were not offered anonymity and so counselling is not a legal requirement.

- iv. The information provided by the GRO will identify the court which made the adoption order. An application to the court can then be made to provide the details of the appropriate adoption agency and the local authority notified of the intention to adopt. Then an application can be made to that agency for information from their adoption files. Applications to the court and the appropriate adoption agency are usually made by the adopted adult's Adoption Support Agency or local authority. Once the application is made to the appropriate adoption agency, that agency will prepare the information to be shared with the adopted adult. If, for any reason the appropriate adoption agency cannot be found or does not have the adoption file, then the court can be requested to provide information to be shared with the adopted adult.
- v. Another route to obtaining information is via intermediary services. Adopted adults, birth relatives and persons with a prescribed relationship (as set out in [s1 Children and Families Act 2014](#)) can apply for intermediary services if the adoption took place in England and Wales. The role of intermediary services is to support eligible persons to negotiate and facilitate contact with adopted adults or birth relatives. The intermediary agency will ask for information from the appropriate adoption agency in order to assist with the search for relatives. It will also seek views on contact from the appropriate adoption agency.
- vi. Adopted adults can apply for access to the relevant local authority files for information about any time they may have spent in care. Applications for access to care records are not subject to adoption regulations and are called subject access requests (SARs). Local authorities usually have a dedicated team to deal with such requests.
- vii. Regardless of whether any of the routes set out in paragraphs i to vi above are pursued, an application can also be made directly to the court for disclosure

of information pursuant to [Rules 53\(4\) Adoption Rules 1984](#) and [32\(6\) Magistrates Courts \(Adoption\) Rules 1984](#). These rules provide that no document or order held by the court in proceeding under the 1958, 1968, or 1975 Acts shall be open for inspection or disclosure without the leave of the court. An application for disclosure can be made by anyone, not only the adopted adult.

- viii. Finally, it is possible for an individual to apply to the court for an order under [s79\(4\) of the Adoption and Children Act 2002](#) that the Registrar General disclose information which would enable an adopted person to obtain a certified copy of the record of their birth. Under this section (which enables disclosure to a person, not only an adopted person) an order may be made in 'exceptional circumstances'.

86. Adoptions which took place on or after 30 December 2005 (known as post-commencement adoptions):

- a. Under [s60\(2\)\(a\) Adoption and Children Act 2002](#) an adopted adult has the right to apply to the appropriate adoption agency for information required to enable them to obtain a copy of their birth certificate. Either the adopted person or the appropriate adoption agency may then apply to the GRO. In exceptional circumstances the appropriate adoption agency may apply to the court for an order that this disclosure should not be made (s60(3) ACA 2002).
- b. Under s60(2)(b) an adopted adult can apply to the appropriate adoption agency for information which was given to the adopters during the adoption process. This will be the child's permanence report and other relevant information.
- c. Under s60(4) an adopted adult can apply to the court for documents which are listed in rules 14.18 and PD14F Family Procedure Rules. There is a compulsory application process which includes identity

verification for the adopted person. The disclosure is subject to removal of any protected information which is information about a person which enables them to be identified. This redaction contrasts with disclosure by an adoption agency, where no redaction is required. This anomaly became apparent following the use by most local authorities of the BAAF combined CPR and Annex A form, so the report has a different disclosure regime depending on whether the local authority or court is providing the disclosure.

- d. Under [s61 Adoption and Children Act 2002](#) a person can apply for protected information from the appropriate adoption agency. The information under this section must relate to an adult. The agency has a discretion to provide this and may need to seek permission to disclose information about individuals mentioned in the records. It will have to take all reasonable steps to obtain the views of any person the information is about. The Disclosure of Adoption Information (Post Commencement Adoptions) Regulations 2005 or the Access to Information (Post-Commencement Adoptions)(Wales) Regulations 2005 apply. There is a right to apply for an independent review of the decision of the appropriate adoption agency. There is a similar procedure pursuant to s62 which applies to protected information about children, although access to the independent review mechanism does not apply under this section.
- e. An individual can make a SAR for care records under the Data Protection Act 2018.
- f. An individual can make an application pursuant to Family Procedure Rules (FPR) 2010 [Rule 14.24](#) FPR 2010. This provides that no document or order in proceedings under the 2002 Act may be disclosed to any person unless subject to any practice direction or direction of the court.

- g. An individual can make an application under FPR 2010 R14.14. This is a provision giving the court a discretion to communicate information relating to adoption, placement and related proceedings. There is no restriction in the rule itself as to who may apply. There is no published guidance as to the application of this provision, including the relevant date for proceedings falling within its remit.

87. Four flowcharts accompany this report ([Appendix A](#)) showing the following:

- (i) Obtaining the original birth certificate of an adopted person;
- (ii) Seeking information or contact through intermediary services;
- (iii) Pre-commencement access to information;
- (iv) Post-commencement access to information.

Which agencies hold the records?

88. In the first instance, adoption records are kept, or were kept, by the appropriate adoption agency, that is the agency which was responsible for placing the child. This might be a local authority adoption agency, or a voluntary adoption agency if the adoption took place before 2005. In the past, applications for access would be considered at appropriate adoption agency level once the appropriate agency had been identified.

89. This changed in 2020 in England when the government passed responsibility for adoption services to *Regional Adoption Agencies*; and in 2014 in Wales when the Welsh Government created and *National Adoption Service*. The regionalisation reforms as set out in *Regionalising Adoption* were intended to reduce the large number of agencies providing adoption services by creating 25-30 regional agencies. The expectation was that larger organisations should be able to pool resources and share best practice resulting in targeted and efficient recruitment of adopters, speedier matching with a larger more diverse pool of adopters and an improved range of adoption support services.

90. The Regional Adoption Agencies are usually responsible for adoption support, but there is considerable confusion as to where to seek help. Some Regional Adoption Agencies contract this work to independent adoption support agencies, and some keep it in house. Added to that confusion, some records are still held in paper format and some are electronic. There is a [National Adoption Service for Wales](#), based on five regional collaboratives, which are responsible for managing requests for access to records.
91. Supporting someone to access their records can be a significant time commitment to which neither the Regional Adoption Agencies in England nor the Regional Adoption Collaboratives in Wales have sufficient resources dedicated. The demand for services outweighs the available resources, and there are often lengthy waiting lists.

Applications to court

92. This route is usually used if difficulties are encountered in accessing detailed agency records although it is not limited to this.
93. Usually, records requested relate to early life circumstances and why the decision for adoption was made. Where children have been adopted after care proceedings this information is held on court files. There is the potential for courts to be drawn into providing information when other routes are perceived to be too expensive or take too long.
94. The first hurdle that may be faced by the applicant who wishes to apply for court records is to find out which court made the adoption order. If the adoption certificate is available this will identify the court, but if not, the adopted person, adoption agency or adoption support agency can apply for a copy from the GRO.

95. Adoption files are stored at courts and by other archive services. Due to court closures files may have been moved to alternative venues. There is currently no register clearly identifying where records may be stored or moved to. Whilst some areas have local guides to locate files, it can be a lengthy and time-consuming exercise.

96. Leaving aside the applications that can be made pursuant to disclosure of records for post-commencement adoptions pursuant to s60(4) and s61 ACA 2002, there is very little guidance as to the approach that should be taken by the courts to applications for disclosure made pursuant to more general powers in rules 53(4) and 32(6) of the 1984 Adoption Rules and Adoption (MC) Rules and rules 14.14 and 14.24 Family Proceedings Rules 2010. Concerns as to how to determine these applications have been raised by many judges across the country.

97. In *Re X (Adopted Child) Access to Court File* [2014] EWFC 33 Sir James Munby P determined an application by the daughter of an adopted person for access to the original court file. In that case the adopted person and the adoptive parents were all deceased, the adoption having taken place in 1930.

98. He applied the following principles:

- i. The court has a discretion whether to disclose information contained in its own file to the applicant.
- ii. In considering whether or not to exercise that discretion the court should have regard to all the circumstances of the case and should exercise its discretion justly.
- iii. The public policy of maintaining public confidence in the confidentiality of adoption files is an important consideration.
- iv. The duration of time that has elapsed since the order was made, and the question of whether any or all of the affected parties are deceased, are important considerations.

- v. The nature of the connection between the applicant with the information sought from the court file is an important consideration.
- vi. The potential impact of disclosure on any relevant third parties, and any safeguards that could be put in place to mitigate this, is an important consideration.

99. This is the only reported authority on the point and there has been no other guidance. In practice, judges report that *Re X* is of limited assistance to the courts deciding these applications. The circumstances of *Re X* meant there was very little risk in disclosure. Most applications which are made are not nearly so clear cut and the court usually has no effective means of deciding vi. above in an informed way. This is a matter of considerable concern to judges who are being asked to make decisions which have very far-reaching effects.

Current practice

100. In order to find out how applications for disclosure of information are being dealt with across the country, the group carried out a survey (see [Appendix B](#)).

101. Key findings were:

- i. Most requests come from adults for information relating to pre-commencement adoptions. Increasing complexity was noted. There are likely to be increased numbers of applications relating to post-commencement applications and increasing expectations.
- ii. Many services identified insufficient resources to meet demand with waiting lists and often long waiting times.
- iii. Available services vary around the country.

- iv. The approach to making applications to court is very variable, as are the responses. There was an overwhelming view that a more consistent process to disclosure of court information is required.
 - v. Agencies and the courts identified an overall increase in demand.
 - vi. The judicial survey identified inconsistencies in dealing with applications. This included the level of detail required on the application itself, variable criteria applied when making decisions, different levels of judiciary dealing with the request in different courts, and whether or not applications were determined on paper.
 - vii. Many courts set their own timescales. A small number of courts note requests are not prioritised.
 - viii. There is confusion about the differences in regulations and procedures between pre- and post-commencement adoptions.
 - ix. Few tracing and intermediary services are available for pre-commencement adoptions, leading to an inequality of provision across England and Wales.
 - x. Just over a quarter of courts charge a fee for the service, with no consistency in the fee level charged.
102. It is clear from all the information above that the current processes for obtaining access to adoption records are confusing, inconsistent, and time consuming for all concerned. There is no national register setting out where records are kept, whether in the court system or with adoption agencies. Given the central importance for adopted people and their families in having access to information, this is not good enough.
103. This group welcomes the important work being undertaken by Professor Elsbeth Neil, Dr Julia Feast and Dr Mary Beck to improve adoption services for adults. The recommendations we make below as to out of court processes are subject to their findings and proposals.

Reccomendations

104. In order to improve practice and procedure across England and Wales we make the following recommendations:

- i. It is crucial to recognise that adoption is a lifelong process. Those affected should have access to services and support on an ongoing basis. Professionals providing services should be trained not only in procedures but also have an understanding of the impact of adoption. Applications for access to records should be supported and dealt with in consistent and appropriate timescales.
- ii. There should be better public information available on all relevant websites, including Regional Adoption Agencies, Regional Collaborative Agencies, Adoption Support Agencies and more. Advice should be simple and clear and should include how to apply for a birth certificate, for adoption records and how to engage intermediary services. Email addresses and telephone numbers should be provided.
- iii. There needs to be greater clarity as to the whereabouts of adoption records. We recommend a protocol to standardise the archiving, retention and retrieval of adoption files across the sector. There is a current project at UCL to develop such a protocol. Such a protocol would reduce confusion and delays for adopted people seeking information in the future.
- iv. There needs to be greater clarity and focus upon the need for counselling and intermediary services.
- v. There should be better training for all staff in all organisations dealing with information requests.
- vi. A national register of court files should be compiled and maintained. This will require the cooperation of HMCTS as well as other archives which currently hold records.

- vii. There should be a national protocol providing a standard procedure for applications for disclosure of court documents, with prescribed timescales and a template application form. A proposed draft is included with this report ([Appendix C](#)).
- viii. There should be further guidance (from or approved by the President of the Family Division) about the court's approach to the exercise of discretion on an application for disclosure (including cases where relevant individuals are, or may be, still alive and where information is often lacking about the context for the application).
- ix. We also recommend that the English and Welsh governments carry out a review as to the provision of information for post-commencement adoptions to ensure that any anomalies or inconsistencies in the process are identified and addressed. This group has identified a number as set out in the body of this report.
- x. It will also be important to consider the much-needed role of intermediary agencies in the future, including the provision of such services for post-commencement adoptions.
- xi. As part of the National Adoption Strategy, the government should specifically seek out and address the experiences of adopted adults who request access to their adoption records.
- xii. Improvements are also needed to processes within the GRO which are beyond the scope of this report.

Chapter 2: Appendix A: Flowcharts

105. See separate PDF, *Chapter 2: Appendix A: Flowcharts*.

Chapter 2: Appendix B: Survey

Access to records - Questionnaire Results

The subgroup developed a short questionnaire to understand the issues in adoption agencies/services in relation to access to records requests including the interface with the courts where information is requested. Alongside this, separate enquiries were made of the courts via the Designated Family Judges.

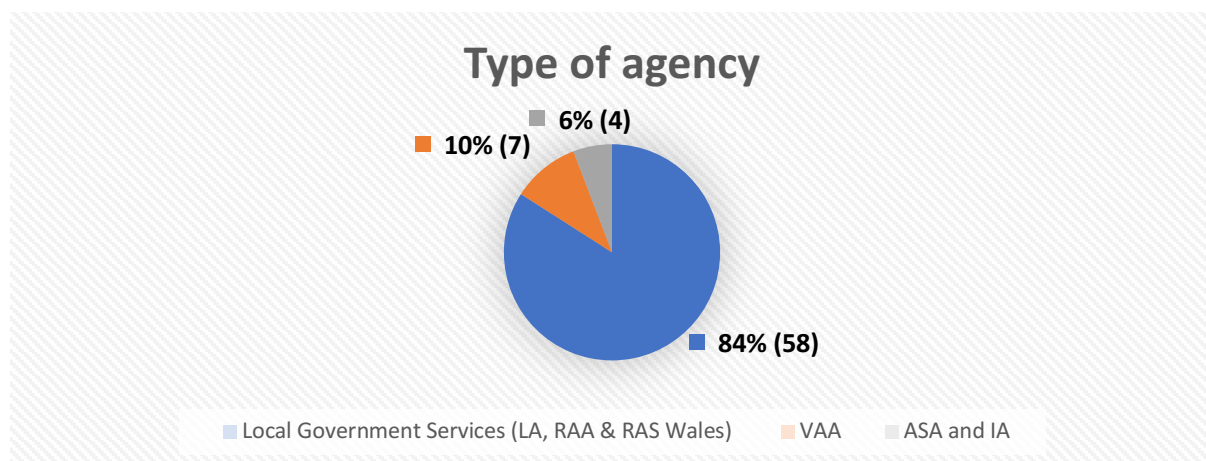
The questionnaire was completed during October and November 2021, having been sent to all relevant services using the networks of group members. There was no obligation on services to respond although they were encouraged to do so, and extra time allowed.

This appendix outlines the findings from those that responded. Although not providing the same rigour as academic research, the sample and findings give a good sense of what is happening across the sector and the issues.

1. Who responded to the questionnaire?

Sixty-nine responses were received from across the range of services that may provide access to records services i.e.

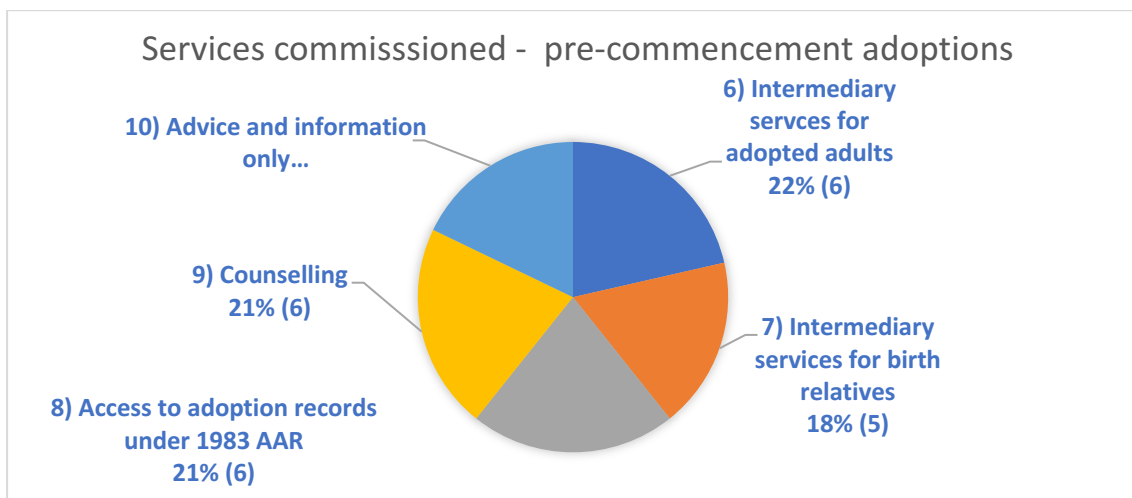
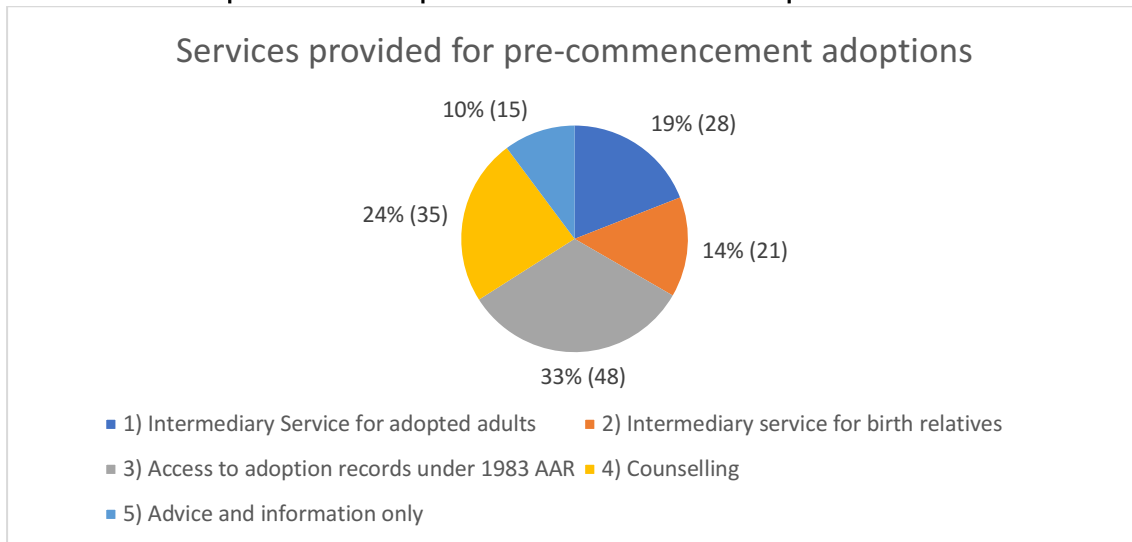
- Local government services comprising Regional Adoption Agencies (RAA's) in England, Regional Adoption Collaboratives (RAC) in Wales and some Local Authorities
- Voluntary Adoption Agencies
- Adoption Support Agencies including those that just provide intermediary services.



2. Services provided

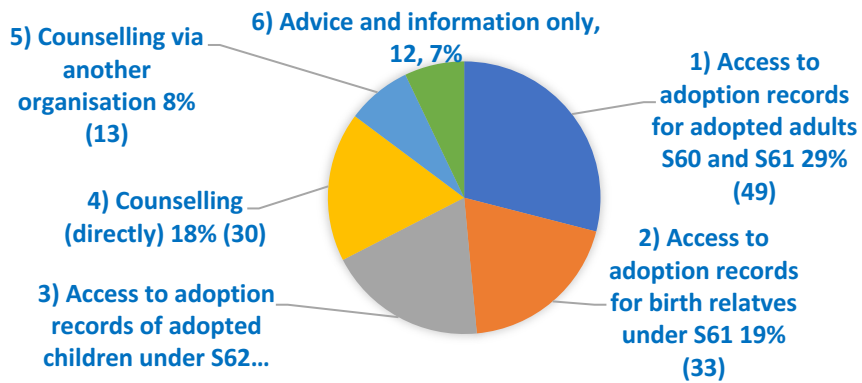
Between them the services provided the full range of pre-commencement and post-commencement access to records services through a mixture of direct provision and commissioning.

2a Services provided for pre-commencement adoptions

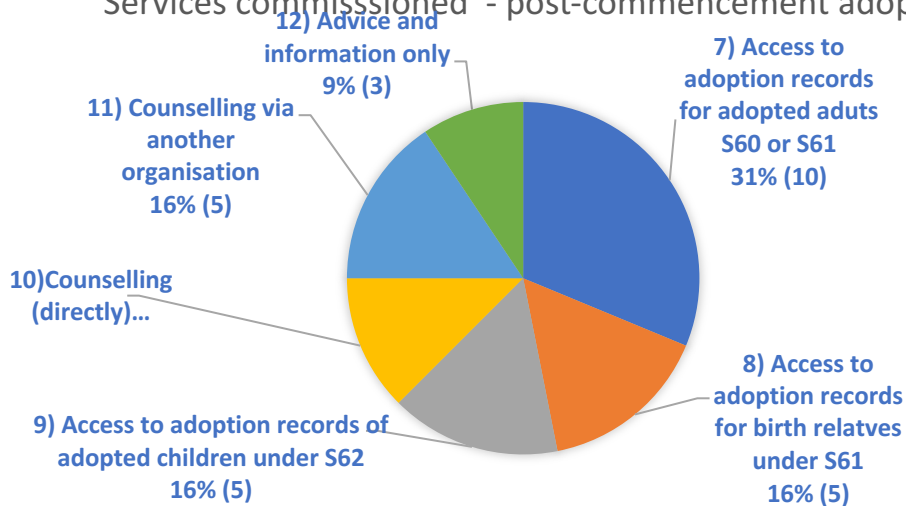


2b Services provided for post-commencement adoptions

Services provided - post-commencement adoptions

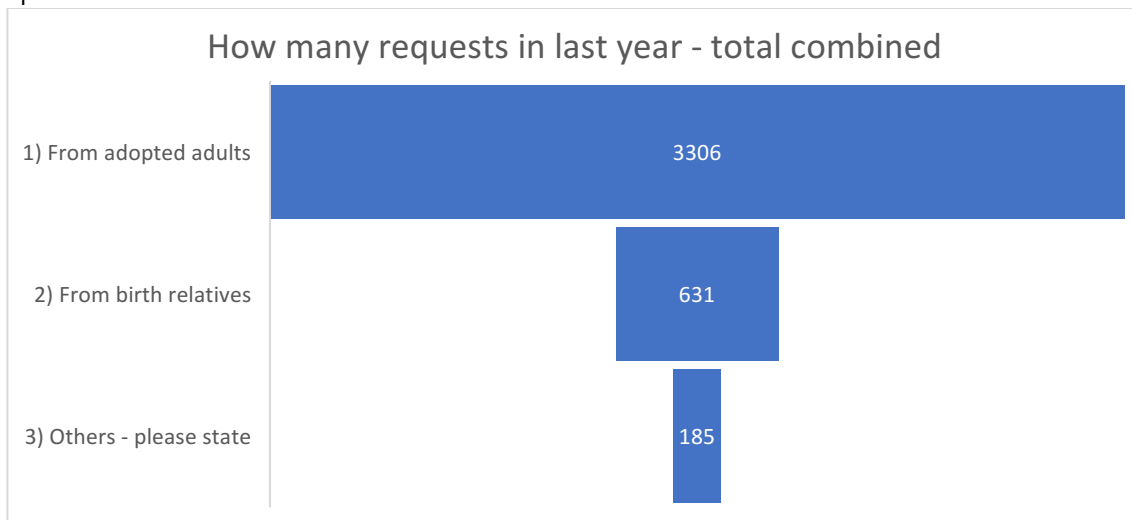


Services commissioned - post-commencement adoptions



3. Level of demand and ability to meet it

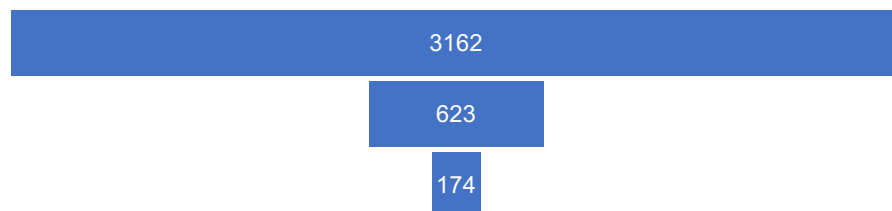
In total, 4122 requests were reported by the agencies that responded to the questionnaire.



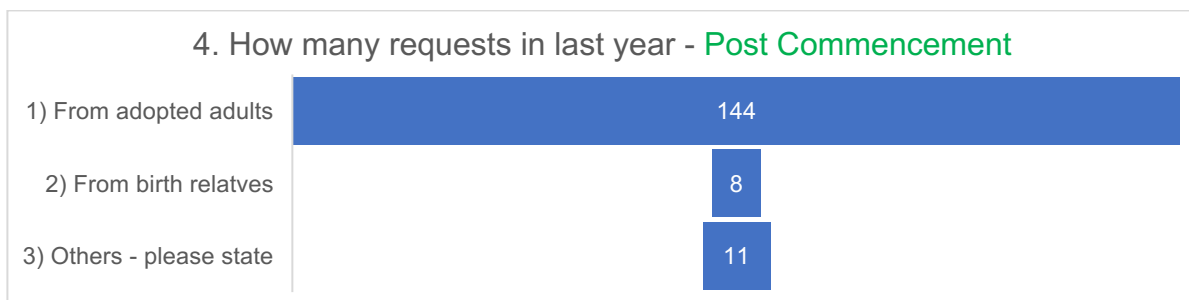
In addition, a small number of local authorities were asked for information under data protection legislation through Subject Access Requests – 9 in total with 7 of these in Wales.

The vast majority of requests for information are still for pre-commencement adoptions and from adopted adults for both.

4. How many requests in last year - **Pre-Commencement**

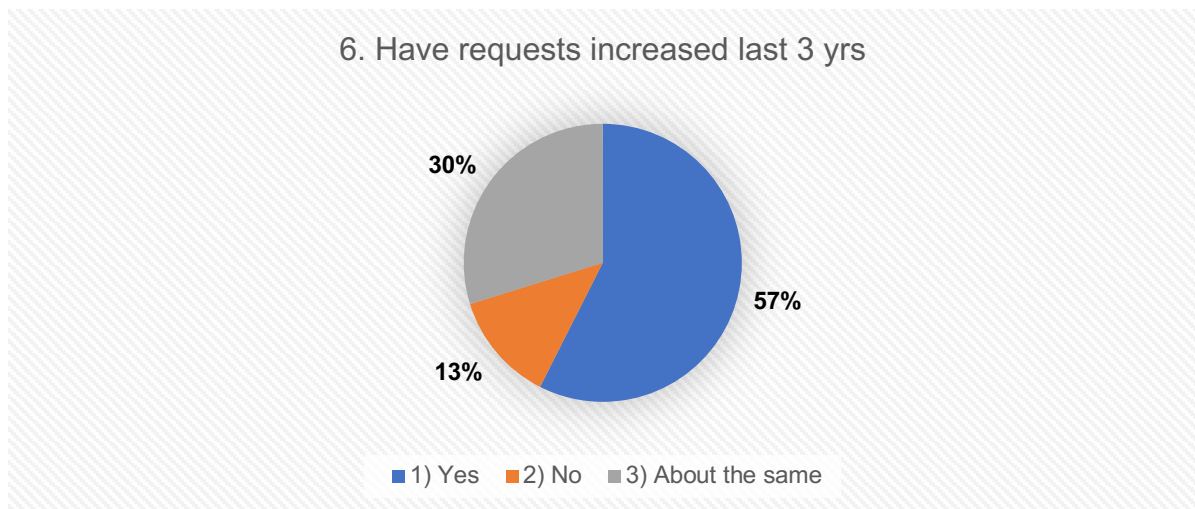


4. How many requests in last year - **Post Commencement**



3a. Change in demand

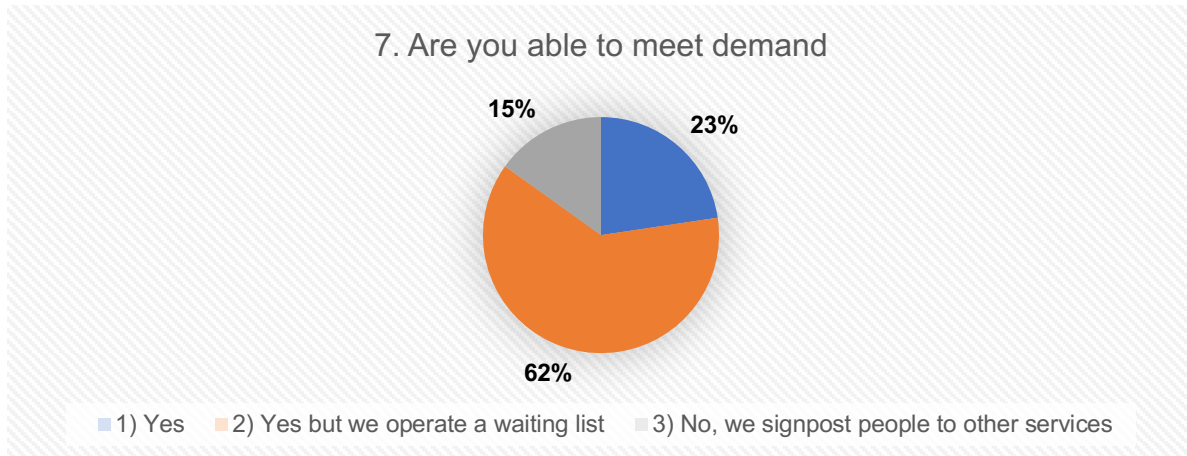
Just over half of the respondents felt that demand had increased in the last three years.



Commentary from some respondents indicated that more complex requests were being received e.g., from people adopted more than once or from relatives of people who were adopted. It was also noted that there were more post commencement requests, as would be expected as more people adopted on or after 30/12/2005 reach adulthood.

3b. Ability to meet demand

Just under a quarter said that they could meet demand, with a further 62% saying they could but only through the operation of a waiting list and with the remainder signposting to other services.



It was also noted that some local authorities do not offer intermediary services at all or only on a limited basis because it is a discretionary rather than statutory duty.

The commentary indicated that many agencies were struggling to meet demand and that waiting times were excessive in a number of areas. The waiting times were due to the service's capacity, the reliance on other services to provide information and also due to the Covid pandemic exacerbating existing pressures.

"The demand is high which presents a challenge in terms of resourcing. This means we cannot always respond as quickly as we would like...."

"We struggle to meet demand, as we usually have to prioritise Adoption Support to struggling adopters and children."

"...current waiting time has increased from 8 weeks to 40 plus weeks mainly due not being able to get information from other AAA's or details of the AAA from the Courts."

"Prior to Covid we had a delay of around 3 – 6 months from enquiry to completion. Covid 19 added to the delay.... [which is now] approximately 1 year as many of the archive buildings are inaccessible. There is now a backlog of work and new enquiries to manage."

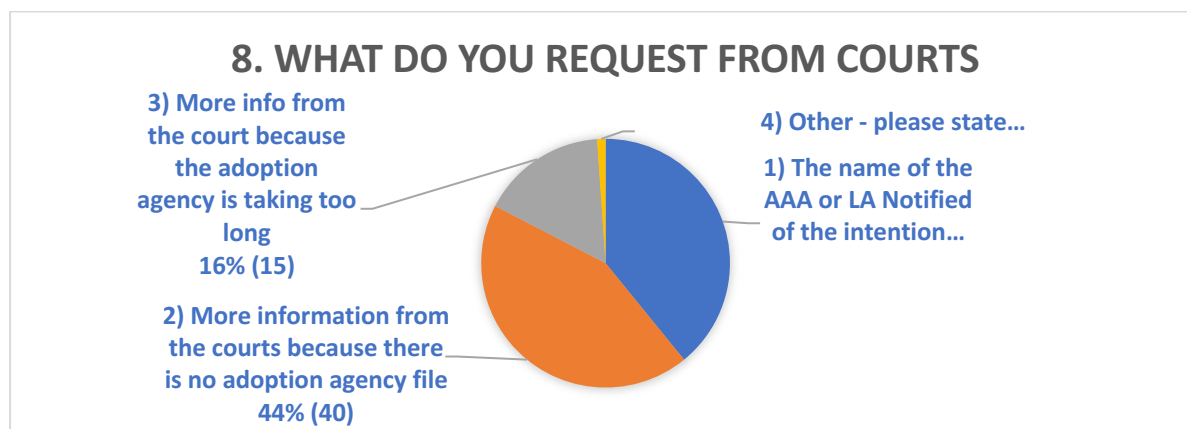
"..... Restrictions on entering buildings due to Covid 19 caused added delay, as we were unable to progress anything for nearly a year – but we are now at a point where we have significantly reduced the backlog"

One agency reported operating a 2-tier system e.g. a waiting list for requests that come from people living outside their area and an SLA with a commissioned service for those people living within their area.

Welsh services had over the summer of 2021 begun to try to move towards a more consistent approach by developing targets of allocating certain pre-commencement cases within 6 months and 4 months respectively based on earliest adoptions / oldest applicants.

4. Interface with the courts

Agencies were asked for details of their interface with the courts. Last year, some 537 requests for information were made to the courts by the agencies that responded to the questionnaire, so there could be many more than this in the agencies that did not respond. Primarily this was information about which agency to contact for information or for more detailed information because the information was not available in the relevant agency or not being made available in a timely way.



There seemed to be a mix of approaches, with some agencies never or rarely contacting the courts unless there was a specific need to, whereas others were doing so more routinely

"Very rarely do we apply to a Court for records, mainly in these circumstances: when it is a private adoption, or when we are searching for an adopted relative, and we need to go to the GRO; they require the name of the AAA if not ourselves"

"When we approach the courts we always evidenced a full chronology of all adoption agencies we have approached and exhausted hence the reason for contacting the court as a last resort."

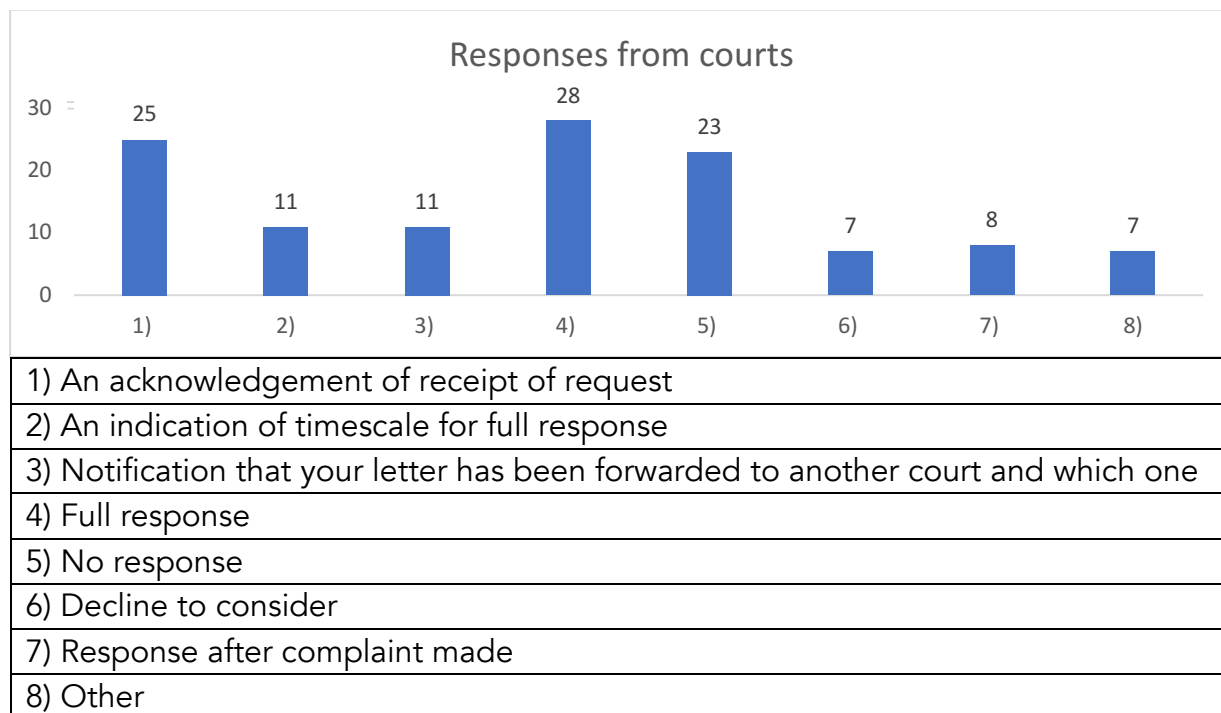
"Experience suggests Court are sometimes the only place to obtain adoption records in particular: adoptions from 1940s 1950s, private and step-parent adoptions."

"We give advice as to how people can access their own Court Records"

"We would contact the court in the above scenarios, but in most cases, we write to the court in any event to request they seek a Judge's permission to share any information they may have which would help us assist the adopted person in their request for information and their access to birth/adoption records."

4a. The response from courts

Agencies reported that they received a full response from the courts in circa 23% (n28) of cases. In a further 39% (n47) there was a positive response in terms of an acknowledgement, a timescale or advice as to the court to which the matter had been referred.



"The Courts in my experience are usually good in their responses., sometimes they call to discuss. Most respond quickly. Some send records even though not requested."

"An example of where it is working well is the Manchester court, which has its own protocols and responds within 10 working days as per HMS Standards."

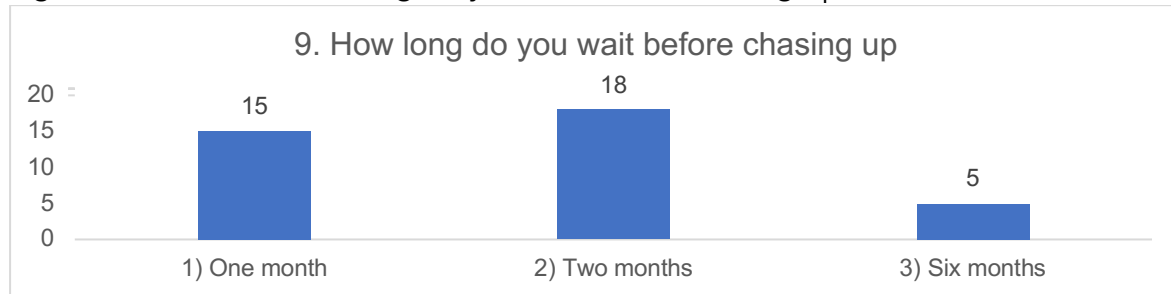
There was an overwhelming view that it would be helpful if there could be consistency in the response and systems for accessing court information although some concern at the practicalities if standardisation included the requirement to visit each court in person.

In a further 32% (n38) however there was either no response or a less positive response.

The commentary exemplified the variation in responses, well summarised by the following quote.

"The response from other Courts varies considerably from very prompt acknowledgement and action to no response despite several requests and chasing."

Agencies varied in how long they wait before following up.



4b. Other issues related to accessing court information

There were indicators that agencies sometimes had to make a 'good case' to get information released.

"The stronger the reasoning provided by us for the need of information the more successful I find that they accommodate and forward some information that they hold."

"Depends on..... understanding of trauma and impact of adoption related cases as there are times when we need to advocate for an adopted adult to make.....understand or at least feel enough empathy to recognise the importance etc."

There were also indicators of some practical difficulties in accessing the information and some Covid-19 workarounds.

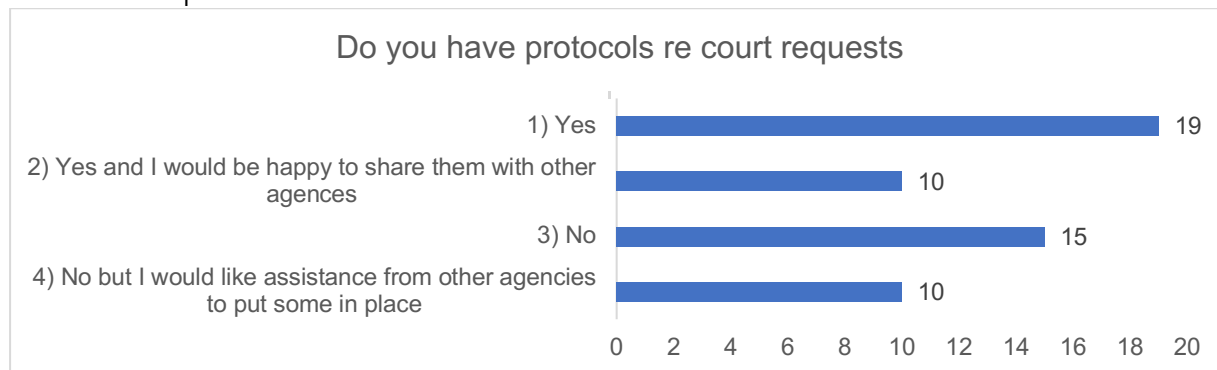
"What is most frustrating is that many of the courts where adoption orders were made are now closed, and it can be difficult to track down where these requests should be made. There isn't an updated Shaw's directory."

"Some withhold information which really should be released to an adopted person. Occasionally one will ask that you go there whatever the geography"

"....courts would request you to come and view the file within the court arena- this is now replaced with a virtual court hearing."

4c. Existence of protocols between agencies and courts

There are examples of helpful protocols in place and a willingness to share these to standardise practice.



Access to records – Judicial Questionnaire Results

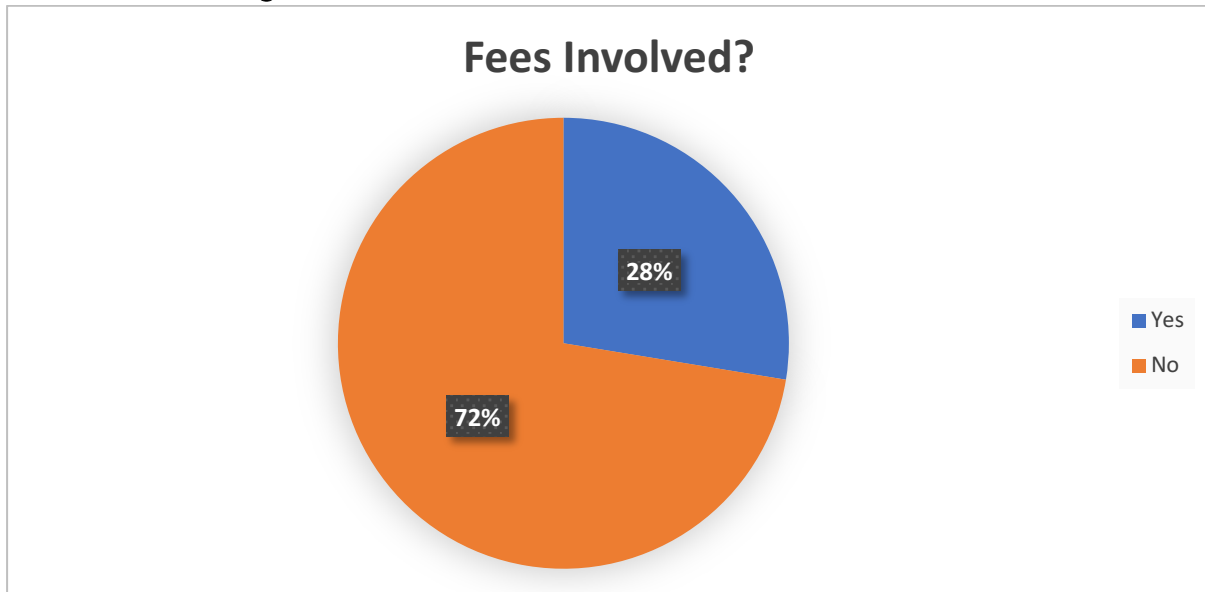
The subgroup chair coordinated a questionnaire to all the DFJ areas enquiring about the matters in this report. There were responses from 29 of the 43 of the DFJ areas. The responses evidence a number of interesting features.

- Different approaches to the application process, including:
 - the extent to which identity is confirmed;
 - any fees charged;
 - how the approach from individuals is managed - a small number decline to provide information;
 - varied criteria for deciding applications;
 - which judicial tier decides and whether a hearing is held;
 - different approaches to disclosure, whether copy documents are sent or the file is inspected in person.
- A lack of understanding of the different roles of IAs and ASAs.
- A concern about the lack of consistency and numerous requests for guidance.

How the application to court is made?

The vast majority confirmed they receive these requests in writing by letter or e-mail, some specified that they also received a proforma application. A small number (3) did not directly answer the question.

Are fees are charged?



Fees are charged in just over a quarter of the court areas.

How proof of identity is managed

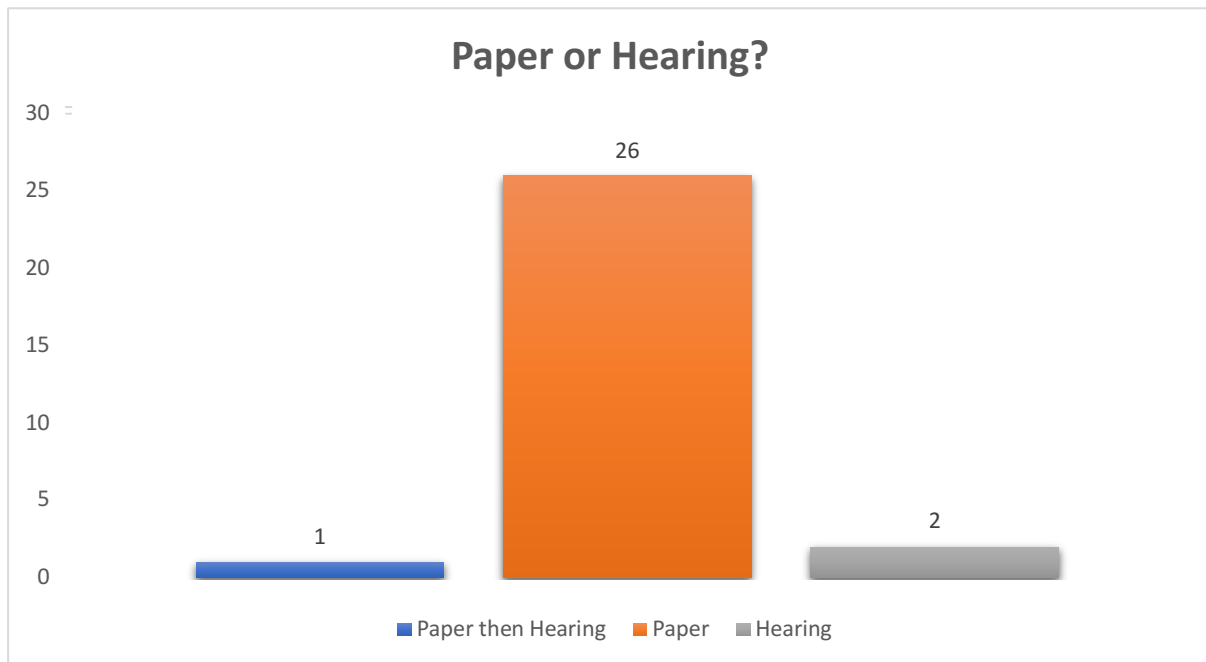
In the majority of court areas photographic identification is required alongside the application. Where this wasn't specified, one area said that they did not have a standard system, another that the Circuit Judge would decide, three areas said that they would rely on the adoption or intermediary agency determining this proof of identity and one replied that this did not apply as they refer all requests to an agency.

Who tend to be the applicants to court?

The vast majority of court areas specified that they receive these through agencies and adopted persons or their relatives. Three specified that they dealt with agencies only.

Whether the request is dealt with administratively or at a hearing

The vast majority of applications are dealt with without a hearing



What informs the determination of the application

Courts reported that this is decided by judicial discretion and/or certain criteria apply. The largest group (9) reported judicial discretion. Where specific criteria were reported, the following were specified:

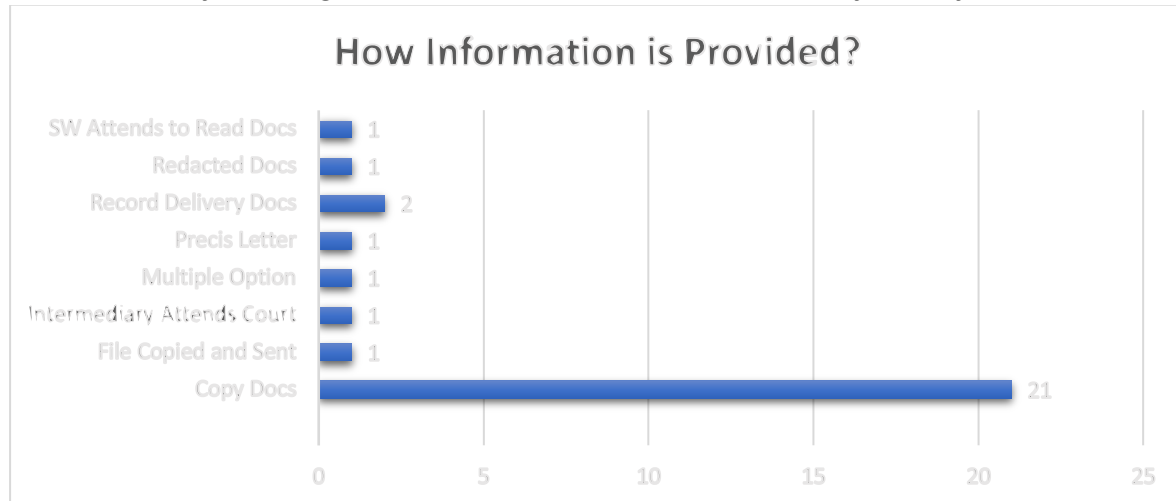
- Case by case basis taking into account age of applicant, likelihood of parent being alive, sensitivity of information sought, likelihood of others being identified, whether support might be required for difficult information. (11)
- Re X applied, one commenting 'liberally' (6)
- Justice Clerks Society guidance followed (3)
- Would not release information to extended families (2)

One court stated disclosure would only be given to an agency and another only to an agency if it was an old case.

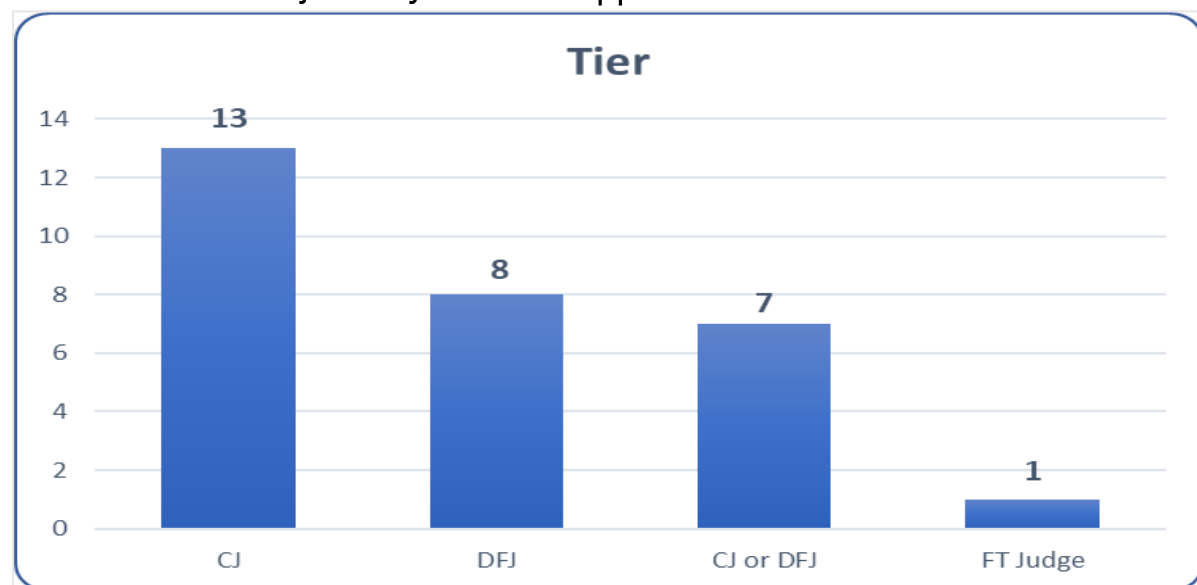
How information is provided

In the vast majority of cases the information to be disclosed is copied and provided to the applicant.

In two areas there is a requirement for the agency to attend in person to access the information by reading the file and one does this in a variety of ways.



At which tier of the judiciary are these applications are dealt with



The tier at which the application is dealt with varies across the court areas

Timescale

There are no agreed timescales set as standard for responses, however it was evident that many courts had set some. The number of courts said they would process ASAP and within a set time frame. The timeframes ranged from an initial response within 2-5 days to referring the matter to a judge within 5-14 days. One court specified their own 10 day 'target'. Two courts stated that these applications were not a priority and would be dealt with as and when time allowed.

Trend in numbers?

The majority of court areas (15) said that there had been an increase in applications, some identified the Covid 19 Pandemic or Brexit as reasons for this. Two indicated spikes in applications at the time of popular TV programmes featuring this. The remaining court areas indicated applications were either static (8) or falling (6). Four court areas provided numbers.

Standard documentation in use

Not all court areas responded to this question. Across those that did the following were in use:

- Template letters and orders/directions;
- Guidance note for judges/aide memoire;
- Justice Clerks Society guidance;
- Protocol;
- Application form.

Chapter 2: Appendix C: Protocol

Access to information from adoption files: Protocol for making applications to the Family Court

Introduction

This protocol sets out the procedure to be followed in the Family Court when seeking access to information from a court adoption file (after the adoption order has been made).

It provides different arrangements, depending on the person/body seeking the information, the date of the adoption order and the nature of the information sought.

The protocol signposts individuals to other potential sources of information.

The forms and other documents referred to in the protocol are attached for information and available from the Family Court on request.

Applications: General

Applications by professionals may be made by intermediary agencies and adoption support social workers. All such requests must confirm the basis upon which the professional is working with the individual, in particular whether intermediary services are being provided.

Applications by individuals are usually made by the adopted person but may also be made by a relative of the adopted person. The Family Court recognises the value of professional support in accessing information from adoption records. This may be accessed through adoption intermediary agencies or adoption support agencies. Individuals are encouraged to seek assistance through these means before making an application to court. The following links may be of assistance:

- [Adoption, Search & Reunion \(adoptionsearchreunion.org.uk\)](http://adoptionsearchreunion.org.uk)
- [Find Adoption Support Providers Near You - First4Adoption](http://www.first4adoption.org.uk)
- <https://www.familyconnect.org.uk/>

Other routes to obtaining information relating to an adoption may be through one or more of the following:

- An adopted adult can obtain a copy of their original birth certificate from the General Register Office. The following link provides information about this: [Adoption records: Accessing your birth records - GOV.UK \(www.gov.uk\)](http://www.gov.uk)
- Local authority children's services records (for children adopted from care);

- Care proceedings documentation (for post-1991 proceedings, when the child automatically became a party) from the local authority, Cafcass or the court;
- Placement order proceedings documentation (to which the child was a party) from the local authority, Cafcass or the court;
- Regional adoption agencies (RAAs) may hold records for those adopted within the region covered, and some hold the records of previous adoption agencies that are now closed.

Adoption agencies:

- Have discretion to disclose information generally; and
- For adoptions on or after 30 December 2005, an adopted adult has a right to receive the Child Permanence Report (s60 Adoption and Children Act 2002).

An adoption agency or local authority can disclose any of the content of adoption proceedings to a health professional or counsellor treating the adopted person (child or adult): Family Procedure Rules 2010, PD14E.

1. The appropriate court

All requests for information must, wherever possible, include the name of the court where the adoption order was granted and the date of the adoption to enable the adoption file to be located.

This information, if not otherwise known, is included on the adoption certificate (the replacement birth certificate produced following the making of an adoption order).

The adopted person can order a copy of the adoption certificate through the [General Register Office](#). The long-form adoption certificate is required (the short-form version does not include the required information).

2. Nature of the request – alternative routes for seeking information

In respect of adoption orders made on or after 30 December 2005, all applications for disclosure of information must be made using [Form A64](#). This form does not apply to adoption orders made before that date.

All other requests are to be made by completion of the application form. This link provides an electronic version of the [form](#).

Please take care to ensure it is completed correctly.

3. Verification of identity

An application by an intermediary agency/adoption support agency is to be accompanied by:

- A certified copy of the relevant entry in the Adopted Children Register (the adoption certificate);
- Confirmation that the evidence of the applicant's identity has been checked and verified by the intermediary agency/adoption support agency (as appropriate).

An application by the adopted person is to be accompanied by:

- A certified copy of the relevant entry in the Adopted Children Register (the adoption certificate);
- Photographic evidence of the applicant's identity (including a signature);
- Proof of residence at the address to which any documentation is to be sent.

This documentation is to be taken to the Family Court from which disclosure is requested or, alternatively, the Family Court for the area in which the applicant resides, where the documentation will be verified and copies forwarded to the Family Court dealing with the application.

An application by a relative of the adopted person is to be accompanied by:

- A certified copy of the relevant entry in the Adopted Children Register (adoption certificate);
- Documentary evidence of the relationship between the applicant and the adopted person (e.g., birth/marriage certificate);
- Photographic evidence of the applicant's identity (including a signature);
- Proof of residence at the address to which any documentation is to be sent.

This documentation is to be taken to the Family Court from which disclosure is requested or, alternatively, the Family Court for the area in which the applicant resides, where the documentation will be verified and copies forwarded to the Family Court dealing with the application.

Confirmation of identity in cases where the applicant is unable to comply with the above requirements (e.g., the applicant lives outside England & Wales or does not have photographic identification) will be considered by the Family Court to which the request is made on a case by case basis.

4. Procedure at court

The Family Court will respond as follows:

- Provide an acknowledgement of the application within fourteen days (which will inform the applicant of the potential delay in locating and retrieving the adoption file);
- Confirm when the adoption file has reached the Family Court and been referred to a judge for directions;
- Provide a substantive response, wherever possible, within twenty eight days of the arrival of the adoption file at the Family Court.

Each application for disclosure of information shall be allocated to a judge experienced in adoption (generally a circuit judge or, with the approval of the [DFJ](#), a named district judge).

The court will consider whether notice needs to be given to any person(s) affected by the application.

The court may give directions in writing before a substantive determination of the application.

The application may be determined on paper or at a hearing.

The court may permit inspection of identified documents at court. Any such inspection shall be undertaken in the presence of a court officer and subject to confirmation of the identity of the individual(s) inspecting.

Copy documents may be provided by order of the allocated judge, subject to any redaction (editing) as may be directed. Copy documents must be sent either by secure email or by post to a verified address by secure delivery.

5. Fees

An application for confirmation of the identity of the adoption agency or for provision of the adoption order will not attract a fee.

The fee payable for provision of any adoption record by the Family Court is prescribed by Ministry of Justice guidance and is presently £11 (whether hard copy or electronic) plus an additional 50p for each subsequent hard-copy page above 10 pages.

Chapter 2: Appendix C: Draft application

Application to receive information from court records:
Adoption orders made prior to 30 December 2005

[If the adoption order was made on or after 30 December 2005, please use prescribed form A64]

Part 1 – The Applicant

Applicant's title: <i>[Mr/Mrs/Ms/Miss/Other]</i>		
Applicant's name:		
Applicant's address:		
Telephone number(s):		
Email address:		
I am the: <i>[tick as appropriate]</i>	Adopted person	
	Social worker – Intermediary agency	
	Social worker – Adoption support agency	
	Relative of the adopted person <i>[Please also identify the relationship]</i>	

Part 2 – The adopted person

Court that made the adoption order:	
Date of adoption:	
Case number(s):	
Full name at birth:	
Full name upon adoption:	
Date of birth:	
Names of birth parent(s): <i>[If known]</i>	
Names of adoptive parent(s):	
Any other names of the adopted person: <i>[upon marriage, by deed poll, etc]</i>	

Part 3 – Preliminary matters *[tick/delete as appropriate]*

	Yes	No
<p>'Relative' applications only – is the adopted person aware that you are making this application to the court? <i>[If not, please explain why in Part 4 below]</i></p>		
<p>All applicants: Have you attached to this application a certified copy of the entry in the Register of Adopted Children?</p>		
<p>Prior to making this application to the Court, have you contacted any/all relevant agencies regarding any records they may hold? <i>[If so, please explain which in Part 4 below]</i></p>		
<p>Do you believe that any third party will or may be affected by this application? <i>[If so, please explain who/why in Part 4 below]</i></p>		
<p>Has the adopted person received counselling?</p>		
<p>Details of any adoption counselling received including names, organisations and dates:</p>		
<p>If the adopted person has not had counselling, please give reasons:</p>		

Applications by intermediary/adoption support agencies only:

Please identify below the identification documentation confirmed by you/your agency:

Identification confirmed by social worker/other:		
Document description	Checked by [name]	Date

Please note: *Adopted persons/relatives making applications directly to the court (and not through an agency) will be required to attend at Court to provide evidence of their identity showing their photograph and signature, such as a passport or driving licence, together with proof of residence at any address to which any disclosed documentation is to be sent. Additionally, in the case of an application by a relative, evidence of the relationship between the adopted person and the relative will be required, e.g., birth/marriage certificate.*

Please contact the court if you are unable to do this.

Part 4 – The basis of the application

I make this statement in support of my application for access to adoption records concerning the relevant adoption proceedings.

Intermediary agency application only:

I seek confirmation of the name of the adoption agency involved in the adoption.

Other applications:

I apply for: *[delete as appropriate]*

- a. a copy of the adoption order only; or
- b. access to or a copy of the following information/documentation which I believe may be contained within the adoption records:

The reason that I seek the information/documentation identified above is:

Statement of truth

[I believe] [The adopted person believes] that the facts stated in this application are true.

[I am duly authorised by the adopted person to sign this statement] *[delete as appropriate]*

Print full name: _____

Signed: _____

Date: _____

Proceedings for contempt of court may be brought against a person who makes or causes to be made, a false statement in a document verified by a statement of truth.

Chapter 3: Practice and Procedure

Remit of the report

106. The current practices and processes involved in adoption and placement applications can be slow, distressing and often confusing for the parties involved. The scope of this report is to consider court process and procedures and provide a summary of the issues that arise before setting out proposals for reform.

Aims

107. The group has strived to produce a set of recommendations which aim to improve best practice within the areas identified, and work within the existing legal framework. Where necessary we have raised issues which in the longer term may require some reconsideration of the law.

Methodology

108. As identified above, the remit of this report is broad, and as a consequence the authors decided to break the work down into defined sections to capture the end-to-end process. Originally, there were five sections; pre issue processes, issuing the application for adoption, case managing the application, final orders and celebration visits, and a miscellaneous section for any outstanding matters. A further section concerning placements applications was subsequently added.

109. A composite form was created for each of the group members to complete allowing them the opportunity to raise any issues in respect of each of the defined sections. This allowed for more focused group discussions.

110. Inevitably there are common themes running through each of the identified sections, which mirror the work being undertaken by other sub-groups.

Background

111. The procedure for making placement and adoption applications at the moment is as set out in the Adoption and Children Act 2002 (ACA 2002”), supplemented by the Family Procedure Rules 2010 (the “FPR 2010”), The Family Procedure (Adoption) Rules 2005 and the Adoption Agency Regulations 2005 in England / the Adoption Agencies (Wales) Regulations 2005 in Wales. International adoptions are covered by the Adoption (Intercountry Aspects) Act 1999 and the Adoption with a Foreign Element Regulations 2005. International adoptions are dealt with in a separate chapter. There have been no material changes to the law or procedure for almost 20 years.
112. Although we make a number of recommendations in this report as set out below, most of them relate to the detail (albeit this is still important) rather than substance of the process and procedures underpinning adoption and placement applications. There is one area which some judges and practitioners repeatedly expressed concern, and that is in relation to applications for leave to oppose the making of adoption orders. Concern was expressed by some regarding the impact of the current legal framework providing parents with the ability to apply for leave to oppose the making of an adoption order when a child is already placed for adoption. Some argued that almost all applications fail and can serve to create further delay and anxiety for the prospective adopters. It was suggested consideration be given to changing the law so parents can no longer apply for leave. However, others pointed out that very recent changes in the legal aid regime may assist parents to access the legal advice they need to gain a realistic understanding as to whether to pursue an application for leave. This is discussed at the start of the chapter.
113. A further area of concern has also been raised regarding Rule 19 applications pursuant to [Rule 14.21](#) of the Family Proceedings Rules with particular emphasis

on the position of wider family members in the adoption process in relinquished baby cases. We discuss this particular issue and make recommendations in the body of the report.

114. We have added in a section at the end dealing with the issues raised by the case of [Somerset County Council v \(1\) NHS Somerset Clinical Commissioning Group and \(2\) The Primary Cohort Children \[2021\] EWHC 3004](#). In the final section we have also made recommendations arising out of the Cumbria Child Safeguarding Practice Review and recommendations from the Child Safeguarding Practice Review Panel.

Applications to oppose the making of an adoption order

115. In cases where there have been care proceedings and a placement order, the next steps will be for the child to be placed for adoption. In some cases, this will take place quickly, but in others it can be a long and drawn out process. For some children no adoptive placement is found and this may lead to an application to revoke the placement order.

116. Once the child is placed for adoption and a sufficient period of time has passed (10 weeks in an agency case) an application for adoption should shortly follow. Despite the existence of a placement order, the parents will be served with notice of the application. They will also be served with a form of acknowledgment (Form A91). This includes a question as to whether they wish to oppose the making of an adoption order. Many parents understandably tick the box to say 'yes'.

117. As the law currently stands the court cannot give leave to oppose the making of an adoption order unless it is satisfied there has been a change in circumstances since the date when the placement order was made ([s.47\(7\) ACA 2002](#)). There is a two-stage test. First the court must be satisfied there has been a change in circumstances. If so satisfied the court must then determine if it is in the child's best interests throughout their life for the application to be granted. There is a

substantial body of case law in relation to such applications. If the parents are granted leave to oppose the making of an adoption order the adoption application will become fully contested.

118. As the care and placement proceedings will have concluded some time before, almost all parents are unrepresented at the point at which they are served with the notice of application for an adoption order. Very few of them are aware of the legal test that will be applied to any application to oppose. They will often assume that their response on the form A91 acts as notice of their application for leave to oppose the making of an adoption order. Technically they should also complete and file a specific application in form FP2 but judges often do not insist on strict compliance because many parents in these circumstances struggle to navigate the court process.

119. In these circumstances many applications to oppose the making of an adoption order are launched by birth parents and must be considered by the courts. As they are launched without consideration of the merits of the case, almost all of them fail. Nonetheless, they take time and cause a great deal of anxiety on the part of the prospective adopters. Many judges have contacted the group to express concern that this process is inhumane and damaging. They consider it creates false hope and further pain for birth parents at the same time as delay for the children. Much court time is spent dealing with these applications, making decisions and allowing the appeal process to run its course.

120. These applications are permitted by statute and so any significant change would require amendments to both primary and secondary legislation. Before this happens it may be prudent to wait and see whether the recent changes to legal aid, extending funding to parents and those with parental responsibility who oppose an application for an adoption order (which is non-means and non-merits tested in the same way as in care proceedings) lead to significant change in the

number of applications that are made. It would also allow time to obtain the perspective of birth parents and to gather data.

Part 19 FPR 2010 applications for declarations as to notification of a child's existence to the birth fathers and extended family members pursuant to Rule 14.21 FPR 2010

121. Pursuant to sections [19](#) and [20](#) of the Adoption and Children Act 2002 a birth mother who relinquishes her baby may consent to the child's adoption. The issue which arises is the procedure by which and the circumstances in which a putative father not having parental responsibility, *or wider family members*, should be given notice of the application for adoption. There appears to be a gap in the Family Proceedings Rules, and we make recommendations to clarify the procedure particularly in cases involving wider family members.
122. An adoption agency may place a child for adoption where it is satisfied that each parent has consented to the placement either with identified adopters or adopters to be chosen by the adoption agency, and consent of the parent has not been withdrawn (s.19 ACA 2002). A parent for the purposes of s.19 is defined as a parent with parental responsibility ([s.52\(6\)](#)). Decisions by an adoption agency under s.19 are subject to the fundamental principles set out in [s.1 ACA 2002](#). The paramount consideration of the court or adoption agency must be the child's welfare throughout their life. Further the court and the adoption agency must have regard to the matters set out in the welfare checklist including the relationship the child has with relatives (S.1(4)(f) ACA 2002). [Section 144 ACA 2002](#) defines "relative" as grandparent, brother, sister, uncle or aunt of the whole or half blood or by marriage or civil partnership.
123. [Rule 14.21](#) of the Family Procedure Rules 2010 makes provision in circumstances where no proceedings have started, for an adoption agency or local

authority to apply to the court for directions on the need to give a father without parental responsibility notice of the intention to place a child for adoption. Any application would have to be made under [Rule 19](#) of the Family Procedure Rules. The difficulty arises because Rule 14.21 refers only to applications concerning a father without parental responsibility. There is no reference in the Rule to applications concerning wider family members, giving rise to the conflict by which an adoption agency or local authority is required to have regard to the relationship a child has with relatives but in the context of a section 19 case it has no clear pathway to the court to seek directions.

124. The issue was considered by the Court of Appeal in the cases of *A, B and C* (Adoption: Notification of Fathers and Relatives) [2020] EWCA Civ 4. It is important to note this decision preceded the amendment of the Family Procedure Rules 2010 by the [Family Procedure \(Amendment\) Rules 2020 No.135](#). Prior to the 2020 amendment Rule 14.21 referred to applications being made to the High Court under the inherent jurisdiction. The effect of the 2020 amendment is to remove reference to the inherent jurisdiction and to substitute “the Court” for “the High Court”. In an effort to provide clarification and resolve the apparent conflict we make recommendations below firstly as to what adoption agencies and local authorities should adopt as best practice, secondly some revision to the Statutory Guidance on Adoption 2013, and thirdly some amendment to the Family Procedure Rules.

Placement applications

125. In accordance with [s.22](#) of the ACA 2002 and s.14.3(1) of the FPR 2010, placement applications can only be made by local authorities. These applications are made when local authorities seek a placement order in respect of the subject child/ren. S.22(1) of the ACA 2002 requires the local authority to issue a placement application if:

- i. The child is placed for adoption by them or is being provided with accommodation by them;
- ii. No adoption agency is authorised to place the child for adoption;
- iii. The child has no parent or guardian or the authority consider that the conditions in section 31(2) of the 1989 Act are met; and
- iv. The authority are satisfied that the child ought to be placed for adoption.

126. Placement applications are most commonly made in the situations envisaged by s.22(1)(d) of the ACA 2002. The paradigm situation is when a local authority issues an application during the course of care proceedings when satisfied that the child should be placed for adoption. The exceptions to these mandatory requirements (in respect of when a local authority must issue a placement application) are set out in s.22(5) of the ACA 2002 and relate to circumstances where the subject child is living with a person who has given notice of their intention to adopt the subject child (provided that an application is made by them within 4 months) and when an adoption application has been made and not been disposed of. In these instances, the local authority does not have a duty to apply for a placement order.

127. A placement application must be made in a prescribed form (referred to as "[Form A50](#)"). In the event that the local authority is seeking to keep the address of the children confidential then a separate prescribed form (hereafter referred to as "[Form A65](#)") should also be issued. The following supporting documents are required:

- i. a copy of the subject child/ren's birth certificate(s);
- ii. a statement of facts which should detail information about the case;
- iii. Copies of any relevant orders;
- iv. Copies of any documents setting out parental consent (even if later withdrawn).

128. The local authority will also prepare a report in support of its application for a placement order. This is known as an Annex B Report. Please note that it is not

obligatory for an Annex B report to be provided at the same time as the Form A65 (and supporting documents as set out above) but it is good practice to do so. The contents and format of this are governed by [Practice Direction 14C of the FPR 2010](#). This sets out that an Annex B report should have three sections which set out the following (in summary):

- i. Section A – “The Report and Matters for the Proceedings”
 - Part 1 will detail the name, role, qualifications and experience of each of the authors of the Annex B report and the name, address and case reference number for the adoption agency.
 - Part 2 should identify whether there are any other persons who should be respondents to the proceedings; whether any are under the age of 18 or lack capacity.
 - ii. Section B – “the Child and the Birth Family”
 - Part 1 provides information about the child including, but not limited to, the name, sex, date of birth, nationality, race, religion of the child. This should include a photograph and physical description, details of their interests, likes and dislikes and any siblings. Similarly, there should be information provided about the parent(s) of the child. Please see PD14C for further information required on the child/ren and the parent(s).
 - Part 2 relates to the child’s relationships, contact arrangements and the wishes and feelings of the child, parent(s) (or guardian) and relatives.
 - Part 3 is to provide a brief account of the actions of the adoption agency on the case.
 - iii. Section C is designed for the local authority to set out their “recommendations” in particular noting the merits of a placement order and recommendations in respect of future contact arrangements.
129. The respondent(s) to a placement application are each person with parental responsibility for the subject child/ren, the child/ren, and those that were parties

to the care proceedings resulting in the placement application being made. Placement applications are separate proceedings and are accordingly given a separate serial number (in the same way as adoption applications as set out below). When placement applications are made during the course of care proceedings they are often heard at the same time and determined at the final hearing of care proceedings immediately after the court's decision on the local authority's application for care orders.

130. As discussed briefly in the introduction to this report, placement applications are usually issued during the course of the care proceedings. They are normally listed to be dealt with at the final hearing of the care case albeit immediately after the court has determined the outcome of the application for care orders. Nonetheless it is important to emphasise they are separate proceedings. They do not have a case number and they are given a serial number in the same way as adoption applications are. As they are separate proceedings, placement applications can be issued on a stand-alone basis. The procedure is the same whether the application is made during the course of care proceedings or as a stand-alone application although if the proceedings are concurrent case management orders will be made during the currency of the care proceedings and final orders made at the same time.

131. A separate placement application will need to be lodged in respect of each child who is the subject of a care application, so for example whilst care orders can be sought in respect of five children under one care application, five individual placement applications would need to be made assuming that is the local authority plan for all five children. The court will require on issue in respect of each child an application in the prescribed form ("Form A50"), a prescribed form to notify the court of the confidential address of the children ("Form A65"), an annex B report (there is further discussion of the annex B and annex A reports below), a statement of facts and birth certificates of the subject children. It is

apparent that this is a very time intensive process for the local authority and the court staff. Although there is no prescribed form for notifying the court, an essential pre-requisite for the issue of an application is the ratification by the Agency Decision Maker (“ADM”) of the plan for placement outside of the family.

132. A number of issues arise out of this process, often as a result of differing practices between local authorities across the country and the time intensive nature of completing the necessary paperwork. Also, there are issues relating to confidentiality.

133. Historically, a local authority would complete as many as three reports in respect of each child where the plan was adoption, a Child Permanence Report (CPR) linked to the placement proceedings, an Annex B report to be lodged with the placement application and an Annex A report for the adoption application. The substantive body of information in relation to the birth parents and the child/ren is the same for both an Annex A and Annex B report meaning that much of the work is duplicated for Local Authorities. The Annex A report will contain an additional section with information about the prospective adoptive parents. We consider this in our recommendations below.

134. Where the placement application is issued during the course of, and dealt with concurrently, with the care application the parents will benefit from legal aid and generally be legally represented. However, there are occasionally stand-alone applications for placement order/s made after the conclusion of the care proceedings. This does create difficulties for the parents if they are not entitled to funding. It was the view of the group that a new leaflet is required for parents in order to explain the placement process given that this is in effect the first step towards the placement of the children for adoption and it is essential that they are able to understand it.

135. An application can be made to revoke a placement order. If the application is made by the local authority or the child this may be done as of right. Any other

person (including the parents) can only do so if the court grants leave. The court will only grant leave if it is satisfied that there has been a change of circumstances since the order was made, and the child is not placed for adoption. The court must adopt a two-stage process. First it must decide whether there has been a change of circumstances (the test being the same as it is for applications for leave to oppose the making of an adoption order). If the answer to this is affirmative, the court must then decide whether to exercise its discretion to grant leave, taking into account all of the circumstances of the case, including the child's welfare (albeit for the purposes of this exercise it is not paramount) and whether the application has a real prospect of success.

136. Where an application for revocation is pending (this means a substantive application, not an application for leave) the child may not be placed for adoption by the authority without the court's leave. Applications for leave to revoke a placement order can, like applications to oppose the making of an adoption order, cause serious delays in cases, sometimes at the very point where the child is about to be placed after a long period of family finding. Nonetheless, the group does not recommend that there should be any change in the law so far as these are concerned. There are cases where it is entirely proper for the parents to be able to challenge the placement of their child. Unlike applications to oppose an adoption order these are usually not prompted by the court process itself and the issue of delay is a matter for the judge determining the application for leave.

Applications for adoption

Before the application is issued

137. An adoption application is issued for the purpose of obtaining parental responsibility for the applicants. Such an order has the effect of breaking the legal ties between the subject child/ren and their birth family. Consequently, adoption applications generally arise after a placement order has been made or as a result

of private applications for adoption for example where the subject child/ren is living with the applicant (for example adoption applications made by step-parents) or where a child was placed for adoption with parental consent.

138. There are various procedural steps which must be undertaken before the application can be made which will vary according to the type of application (agency or non-agency) and the identity of the applicant. In all cases an application for adoption cannot be made unless the child/ren concerned have been living with the applicants for the requisite period, which depends upon the type of adoption and identity of the prospective adopters. The range is from 10 weeks preceding the application in an agency case and six months for a parent or partner of a parent, one year preceding the application where the applicant is a foster parent and, three years in the preceding five years prior to the application for someone who is not a parent or a foster parent. The court has power to grant leave to abridge the time periods in the latter two cases, namely where the applicant is a foster carer or the applicant is neither a parent nor partner of a parent.

139. In all agency cases prospective adopters are approved and matched by the Adoption Panel before the child/ren are placed, and in some cases (for example where the child is relinquished by the parents) there is an additional requirement for the panel to approve that the child is suitable for adoption. This process is extremely important but there can be delays with convening the requisite panels and between the different approval processes.

140. [Regulation 24 AAR 2005](#) requires local authorities to provide such preparation for adoption to prospective adopters as they consider appropriate. Concern was raised about the level of training prospective adopters can expect to receive which varies across adoption agencies. Whilst each child will have their own individual needs there are common issues adopters will face and which will have general

application. Concern was also raised about suitability to adopt reports and matching reports which vary considerably across adoption agencies.

141. In non-agency cases, the applicants must give notice to the local authority not more than two years or less than three months before making the application. There is no mechanism or procedure by which the period of this notice can be reduced.

Annex A reports

142. As with placement applications, a report needs to be prepared to provide information to the Court in determining an application for an adoption order. This report is known as "Annex A." This report has six sections which are defined in [PD14C of the FPR 2010](#). These relate to the following matters (in summary):

- i. Section A – "the Report and Matters for the Proceedings"
 - This includes information about the principle authors of the report; and
 - Whether the adoption agency considers that any other person should be made a respondent or party to the proceedings (including noting if any respondents are under the age of 18 or lack capacity).
- ii. Section B – "the Child and the Birth Family"
 - This includes information about the child and each parent for the child.
 - Part 2 of this section sets out the relationships, contact arrangements and views of the child, each parent and/or guardian and relatives of the child.
 - Part 3 provides a summary of the actions of the adoption agency.
- iii. Section C – "The Prospective Adopter of the Child"
 - This section should detail information about the prospective adopter including their suitability to adopt
 - It should also set out whether the prospective adopter is willing to follow the wishes of the child or their parents and guardian in respect of the child's religious and cultural upbringing; the views of the wider family in relation to the proposed adoption; the reasons for wishing to adopt the child; any

hope and expectations the prospective adopter has for the child's future and their wishes and feelings in relation to contact.

- Part 3 sets out a brief account of the actions of the adoption agency.

iv. Section D – “The Placement”

- This section is designed to provide further information in respect of the placement and timescales for support beyond the making of an adoption order and other relevant information to assist the Court.

v. Section E – “Recommendations”

vi. Section F – “Further information for proceedings relating to Convention Adoption Orders, Convention adoptions, section 84 Orders or adoptions where [section 83\(1\)](#) of the 2002 Act applies.” Please see PD14C of the FPR 2010 for further details.

143. As with Annex B reports, there is considerable variation in content of Annex A reports. Most (but not all) Annex A reports contain the information required by PD14C.

144. If a prospective adopter in a non-agency case fails to issue in a timely manner after giving notice to the local authority of an intention to adopt, the Annex A report might be out of date by the time the application is made, depending upon the circumstances of the family.

Issuing the application

145. All adoptions are currently issued by lodging three copies of the prescribed form (Form A58) with the court together with copy birth certificate/s and marriage or civil partnership certificates where appropriate. When received by the court, the application will be allocated a serial number and will be referred to the Judge for directions. [Rule 14.7 of the FPR 2010](#) requires a first hearing date to be listed within 4 weeks, however, Rule 14.6 (4) gives the court discretion to give initial directions on paper instead of listing for a directions hearing.

146. Some of the forms are confusing. Form A58, for example is confusing to many applicants. It is hoped that the Reform Programme will clarify this, as the applicant will be assisted to complete it online by a series of prompts. There are at least three types of consent form, which should be revised into one.
147. The group considered it was important, where possible, for the Annex A report to be lodged with the application. Doing so would avoid delay in the court process, in reality it could reduce by half the time that such applications currently take where the Annex A report is lodged in response to the first case management order after issue of the adoption application.

Case management

148. The rules currently provide for a directions hearing to be listed when the application has been issued. However, they also provide for an alternative allowing the application to be referred for directions on paper. Anecdotal evidence indicates most applications are referred on paper for case management directions pursuant to Rule 14.6(4) of the FPR 2010 and it is suggested this should be the preferred way of initially dealing with the applications. It helps to avoid unnecessary delay and avoids placing undue pressure on listing.
149. Rule 14.8 of the FPR 2010 sets out the matters the court will consider when giving directions. Currently, case management orders do vary and it would be helpful if a standard order can be produced which will cover matters including the filing of any Annex A Report if not lodged on issue, setting timescales for any application for leave to oppose by birth parents and listing for a final hearing. Other matters which may be addressed as part of the order may include whether the child needs to be made party to the proceedings, the appointment of a litigation friend for any protected party and any directions concerning the tracing of birth parents and service of documents.

Final hearings

150. The group considered that there could be block listing for final orders to be made once the time for appeal of any application for leave to oppose the adoption had run out. A template order should be created.

Celebration visits

151. The group discussed some of the problems concerning celebration visits. There is concern that when adoptive families attend court there is a significant risk that they will come into contact with other birth parents who are involved in ongoing care proceedings leading potentially to upset for both adoptive families and the parents. It is even possible that adoptive families could come into contact with the birth parents of the child/ren they are adopting if those parents are involved in proceedings concerning younger siblings.

152. The point was also made that the word 'celebration' can be inflammatory from the viewpoint of the birth parents. Consideration was given as to whether celebration visits should take place at all. However, anecdotal evidence shows it is an important step for the adoptive parents and potentially the only time they will go to court in connection with their application. It was of concern that adoptive parents who wanted a celebration visit may have to travel considerable distances to a court.

Other areas of concern

153. The group discussed a number of other matters which ultimately would require amendments to either the current legislation or rules. Some matters were discussed which technically were beyond the scope of this sub-group, but which

nevertheless were felt to be of such importance it was right to flag them for potential future consideration.

154. [Regulation 23 AAR 2005](#) requires the local authority to carry out stage one checks (enhanced police checks) to establish if a person may be suitable to adopt. If clear, the local authority goes forward with stage 2 checks ([Regulation 25 AAR 2005](#)). Significant delays occur in obtaining stage one checks this often leaves the local authority in an impossible position, either delaying the report or proceeding to a substantive report without stage one checks.
155. Concerns were also raised about English early permanence placements ("EPP"). The case law confirms the placement becomes an adoptive placement when the adoptive match of the child with the prospective adopters is approved by the [ADM](#). This is quite separate to the ADM approval of the EPP itself which would have taken place earlier. The time the child/ren has lived with the applicants is a question of fact and should include the time lived with the applicants prior to matching approval. However, it was felt this should be reflected in updated statutory guidance. The statutory guidance also implies that EPP should be used prior to the making of a placement order. It is not clear if such a placement can be made after a placement order has been made, or if an EPP can be approved in principle by the ADM prior to the birth of the child to be confirmed after an [ICO](#) has been obtained. It is felt this would assist the LA in both pre and post birth planning avoiding potential delay.
156. Issues were also discussed concerning notified adoptions, in particular section [44\(3\) ACA 2002](#) which requires notice be given of not more than two years. Whilst a period of reflection may be appropriate between giving notice and issuing the application, two years seems excessive.
157. Concern was raised specifically about step-parent adoptions and the live with requirements under section [42\(3\) ACA 2002](#). Six months was not considered by the group to be a sufficiently long enough period for child/ren to live with a step-

parent before issuing an adoption application and it was felt this period should be extended.

Schedule of recommendations

Applications for leave to oppose the making of adoption orders

158. We recommend that there should be a review in 12 months' time to consider whether the changes to legal aid make a difference to the number of applications for leave to oppose adoption orders that are made and refused. Ideally records should be kept of all applications made during the period, and the outcome; we will consider how this could be achieved. We also recommend that the review in 12 months' time consider any representations from organisations such as Family Rights Group as to the perspective of birth parents with experience of their children being adopted.
159. In the absence of any change to the Act, the Family Procedure Rules should be amended to provide for a summary procedure to deal with these applications on paper if the judge considers it appropriate. If dealt with on paper there should be no automatic right to an oral hearing, although appeal procedures should be retained. At least paper decisions could be made more quickly so that final hearings can be listed as soon as the time for appealing a refusal of leave to oppose has run out. There would be other consequential amendments that may be necessary, for example to [Rule 4.4 FPR 2010](#) (the courts power to strike out a statement of case) which is currently disapplied in Rule 14 cases.
160. The requirement to serve the parents can create delays from the very beginning if their whereabouts are not known. We suggest the local authority should be pro-active in maintaining links with the parents following the making of a placement order so they can either be found at the date of issue or if not an application or request can be lodged at the earliest stage for DWP disclosure. It is also suggested the Annex A report is lodged with the application.

161. A nationally adopted clearly written leaflet about the adoption application process should be created and served on the parents with notice of the issue of the adoption application. This material should also be available online together with appropriate translations for those parents for whom English is not their first language.
162. Where parents have given notice that they wish to seek permission to oppose the making of an adoption order, [Form FP2](#) (in respect of seeking leave to oppose the making of an order) should be sent to the parents with notice of the application allowing them to make any application to oppose in proper form.
163. A template statement with a statement of truth incorporated should be created and sent to the parents at the same time. This should contain headings directed at the legal test, for example requiring the birth parents to set out what they say have been the change in circumstances since the making of the placement order, what they say should happen to the child, and why the proposal that they put forward is in the child's best interests.
164. A template order for initial case management orders should be created to provide continuity of approach and to timetable to a final hearing. A template should also be created for final adoption orders. Consideration should be given to amending the Family Procedure Rules so that where an application for permission to oppose has been determined and refused and no appeal has been lodged, the final order may be made on the papers.

165. Part 19 FPR 2010 applications for declarations as to notification of a child's existence to the birth fathers and extended family members pursuant to Rule 14.21 FPR 2010
166. In relinquished baby cases where the mother does not wish the father without parental responsibility, or wider family members to be notified, the procedure that is set out in paragraph 87 of the judgment of Lord Justice Jackson in *A, B and C (Adoption: Notification of Fathers and Relatives)* [2020] EWCA Civ 41 should be followed and should be incorporated as best practice.
167. Since reference to "inherent jurisdiction" and "High Court" have now been removed from [Rule 14.21](#) we do not consider it is necessary for Rule 19 applications in respect of notice to fathers or wider family members to be referred to a High Court or [Section 9 Judge](#). We recommend applications of this nature should be referred in the first instance to the [Designated Family Judge](#) who in consultation with the Family Division Liaison Judge may allocate to an appropriately experienced family judge.
168. On issue no notice should be given to fathers without parental responsibility or wider family members until any issues regarding the giving of notice have been determined. The court may issue such directions as it deems appropriate in the absence of the parties including the appointment of a Cafcass reporting officer.
169. Applications should be listed for an urgent case management hearing before the allocated judge who should consider amongst other matters the need for any further evidence, the appointment of the reporting officer as guardian for the child and the joining of the child to the application, the listing of a final hearing, the format of the final hearing and the evidence to be taken.
170. The [English Adoption Statutory Guidance 2013](#) version and draft 2014 version should be updated to reflect current case law. Although we make this recommendation here in the case of *A, B and C (Adoption: Notification of Fathers*

and Relatives) [2020] EWCA Civ 41 the recommendation has general application across all areas of the adoption process.

171. Rule 14.21 of the Family Procedure Rules should be amended to include reference to wider family members to make it compliant with and supportive of the duties of the adoption agencies and local authorities under Section 1(4)(f) ACA 2002.

The application for placement order/s and guidance notes

172. The Guidance notes should be revised to clarify some of the confusions in the Form A50, notably, Part 2 section 7 (child's current address) and Part 2 section 8 (grounds of the application).

173. A new leaflet is required to be made available to parents who are respondents to a placement application to explain the basic process with translations where appropriate. This is particularly important where the application is a stand-alone application after care proceedings have been concluded and where the parents may not have the benefit of legal advice depending on the application of the merits test for legal aid.

174. A template should be created for the statement of facts to provide some uniformity of the information in the statement. The information should include the nature of the child/ren's current placement status, e.g., with parent at home or local authority foster care. The statement should also include the date of the best interest decision by the ADM and details of how and when the parents were informed of the decision.

175. If the local authority wishes the current address of the child to remain confidential it must lodge Form A65 with the application.

176. Going forward consideration should be given to Form A50 being amended to include a section seeking permission to keep a child's address confidential in place of a separate Form 65.

Issuing the placement application

177. It is suggested the following documents should be lodged when applying for a placement order:

- a. The form A50 application;
- b. The form A65 (where local authorities request confidentiality of the child/ren's current address, which will be the majority of cases). *As we understand the electronic process it will work on the basis of parties having access to an electronic file. There will need to be a secure area where access to confidential data is restricted;*
- c. Certified copy of the birth certificate for each child. *Currently the original certificate is required. If placement applications move to electronic filing there will need to be facility to lodge a scanned certificate. Presumably there will be a separate PD for electronic filing to cover this. Alternatively, if birth certificates are to be filed within the care proceedings provision will need to be made to disclose the certificate/s into the placement application;*
- d. Statement of facts complying with the requirements of [FPR 14.9](#) and those additional matters set out in point 4 above;
- e. If a care order has already been made a copy of the final order;
- f. A copy of any parental responsibility order or parental responsibility agreement;
- g. A copy of the ADM decision; and
- h. The Annex B report.

Case management

178. Where applications are received on time in compliance with case management orders the court should always acknowledge receipt. This will be resolved with electronic filing which should produce an automatic receipt.
179. The use of short, standardised orders should be encouraged.
180. Case management orders should contain provisions for the timing of ADM decisions which must be complied with.
181. In the event that the ADM's decision is delayed for any reason the ADM shall notify the parents and the court of the reasons for the delay, what action is being taken to address the delay and the date of the next ADM meeting.
182. Case management orders often contain provisions such as "*In the event of the placement application being issued the following directions shall apply ...*" These provisions are unnecessary since the placement application will have its own quite separate serial number and its own case management order(s).

Applications for leave to revoke placement orders

183. The guidance notes should be revised to address the issues noted.
184. The local authority should devise a template letter for, and be proactive in, advising the parents and the court, if applicable, as to any change in the status of the placement e.g., from foster placement to prospective adoptive placement.

Annex A and B Reports

185. The Annex B report should not be considered in isolation. For local authorities, the preparation of the CPR, Annex B and Annex A reports are complex and time consuming and, in many aspects, involves the local authority having to repeat work in preparing each report. Basic errors in the completion of the annex B reports can cause delays and it is anticipated that such errors could be reduced by relieving the pressure on social workers by not having to complete the same information in different reports.

186. CoramBaaf have recently created a combined form of report which can be used for both the CPR and Annex B reports. Much time could be saved by the creation of a form of report which could include the information required for the CPR, Annex A and Annex B. The aim should be to streamline the reports whilst at the same time improving the quality. The group recommends the creation of a template for a unified report, ensuring compliance with Adoption Agencies Regulations 2005 in England / Adoption Agencies (Wales) Regulations 2005 in Wales and PD14C. This could be added to and built upon as the case progresses.

Adoption (pre-Issue)

187. The Annex A should be prepared before the Form A58 adoption application is issued. Work to be undertaken to create a template for unified reports. Please see recommendation above.

188. Applicants applying for an adoption order following a placement order should be required to give notice to the local authority as to when they intend to make the application enabling the local authority to prepare the Annex A report before issue.

189. The local authority should be pro-active in maintaining regular communication with birth parents after the conclusion of care proceedings.

190. There should be a national protocol governing the transfer of information between local authorities and regional adoption agencies.

191. In relinquished baby cases wherever possible, consideration of both the plan of adoption and proposed adoptive match should take place at the same adoption panel meeting and ADM decision meeting in order to avoid delay.

192. Forms of consent (section 19 and section 20 cases) should be revised into one unified form which should also specifically address the issue of statements under section 20(4) of the ACA 2002 act and positively confirm whether or not the parent wishes to be notified of the adoption application.

193. In all non-agency applications, applicants should be encouraged to proceed with applications at an early stage after the requisite notice period has been given and to notify the LA of when they propose to issue the application. This will allow the LA to prepare the Annex A report and will avoid unnecessary delay.
194. In non-agency applications where the applicant has delayed issuing, and/or they have not notified the LA of when they propose to issue, and as a consequence the Annex A report has become outdated the social worker shall lodge a statement confirming there has been no change in circumstances since the Annex A report was prepared or updating the court on any changes which may have occurred.
195. The Reform Programme will develop a system of collaborative working to allow input into the A58 form from both the applicant/s and the local authority.
196. A national protocol should be devised to include training and information materials for use by all agencies. This should include the following areas: documents to be placed before the ADM for decisions on the plan of adoption and matching, the preparation of reports (CPR, Annex B and Annex A), working collaboratively with the applicants, and the use of template letters to be devised.
197. A national protocol should be devised with police authorities providing for the format in which information is requested for stage 1 checks and the timescales within which a response should be given.
198. National templates should be devised for suitability to adopt and matching reports.

Issuing the adoption application

199. The following documents should be lodged (filed electronically) on issue:
 - i. [Form A58](#);
 - ii. Copy birth certificate;
 - iii. Copy of any marriage/civil partnership certificate;
 - iv. Any Deed Poll evidencing change of name;
 - v. A copy of the care and placement order;
 - vi. A copy of the statement of facts in the placement proceedings;
 - vii. Any advance consents including any section 20(4) statement;
 - viii. The Annex A report;
 - ix. Any request/application in [Form FP2](#) for DWP disclosure of address(es) for parent(s) (e.g., if the date when parent/s address was last confirmed as current is over 3 months)

Case managing the application

200. Comprehensive guidance notes about the process should be served on the parents with notice of the issue of the application.
201. Consideration should be given to amending the Family Procedure Rules where an application for permission to oppose has been determined and refused and no appeal has been lodged, provision should be made for a final hearing to be block listed for final orders to be made.
202. A template order for initial case management orders should be created to provide continuity of approach and to timetable to a final hearing.
203. A template should be created for final adoption orders.

Celebration visits

204. The facility allowing adoptive parents to attend court to mark the making of an adoption should be retained.
205. Terminology needs to be revisited, examples may be “Life Appreciation Visit,” or “Adoption Appreciation Visit”.
206. It should be made clear to adoptive parents that the onus will be on them to ask the court to arrange a visit.
207. There should be a national protocol which facilitates the transfer of a case to allow adoptive parents to attend a local court.
208. Every effort should be made by the court to arrange visits in such a way to ensure that birth parents do not come into contact with adoptive parents at court to include checking case lists to ensure no connected proceedings are taking place on the same date. Courts should be required to prepare a plan to try and achieve this.

Other areas of concern

209. Hitherto legal aid has been available for parents in placement applications which have been issued to run concurrently with the care application, however, it has not been available for parents who wish to oppose a subsequent stand-alone placement application. We believe this may be addressed by the changes being made as a result of [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Legal Aid: Family and Domestic Abuse\) \(Miscellaneous Amendments\) Order 2023](#), due to come into force on the 1st May 2023. The order makes changes to [The Civil Legal Aid \(Merits Criteria\) Regulations 2013](#) and [The Civil Legal Aid \(Financial Resources and payment for Services\) Regulations 2013](#).

The interpretation sections of both 2013 regulations are amended to specifically make reference to applications under section 21 and to opposing placement and adoption orders.

210. Consideration should be given to amending the [Adoption Agencies Regulations 2005](#) / the [Adoption Agencies \(Wales\) Regulations 2005](#) to make clear a local authority may proceed with stage 2 checks notwithstanding responses to stage 1 checks are outstanding. Local Authorities should however be able to terminate stage 2 if stage 1 checks show an individual is not suitable to adopt without the case having to be presented to the adoption panel / [ADM](#) and without applicants having recourse to the independent review mechanism.
211. Statutory guidance should be updated to clarify if early permanence placement (“EPP”) can be made after a placement order has been made and also to clarify if the ADM can approve in principle EPP prior to the birth of the baby.
212. Consideration be given to amending section [44\(3\) ACA 2002](#). Currently, a person wishing to adopt a child who has not been placed is required to give notice to the local authority of their intention to apply for an order. Currently, the notice should not be more than two years before the application is made. It is recommended this period is reduced to one year.
213. Any notice given under [section 43\(3\) ACA 2002](#) must be in writing (e-mail or letter) and clearly dated to avoid any confusion as to when notice was given.
214. Consideration be given to extending the ‘live with’ requirement under section [42\(3\) ACA 2002](#) in relation to applications by the partner of a parent.
215. Consideration be given to amending [s.47\(7\) of the ACA 2002](#) to specify that any change in circumstances should be significant.
216. Consideration be given to amending the Family Procedure Rules to include a new summary procedure for dealing with applications for leave to oppose the making of an adoption order.

217. Consideration be given to any consequential amendments of the Family Procedure Rules for example [Rules 4.3\(5\) and \(6\) and 4.4\(1\)](#).

Postscript

218. Following the difficulties raised by the cases reported in *Somerset County Council v NHS Somerset Clinical Commissioning Group*, above, and in order to avoid a repeat of the situation there (where adoption medical reports had not been completed in accordance with the regulations) and as a result of the issues arising out of the [Cumbria Child Safeguarding Practice Review](#) and recommendations from the [Child Safeguarding Practice Review Panel](#), the group recommends as follows:

- i. There is no need for a formal contract between the local authority and the agency medical adviser, however, there should be some memo in writing to confirm who the appointed agency medical adviser is (e.g., an exchange of emails would suffice).
- ii. The memo should make clear the agency medical adviser has the necessary experience and must comply with the requirements of [Schedule 1](#) Part 2 of the Adoption Agency Regulations 2005 (AAR 2005).

219. Further issues have been raised following the conclusion of the Cumbria Child Safeguarding Practice Review and recommendations from the Child Safeguarding Practice Review Panel. As a result of these reviews the group further recommends as follows:

- i. The agency medical advisor summary report is required for all Annexe A reports.
- ii. In agency applications adopter's health will be subject to ongoing review by the agency, therefore the medical advisor summary report may be older than three months. Providing there has been no material change in circumstances

since the most recent medical advisor summary this can be attached to the Annexe A report along with the health declaration from the applicants stating there are no changes to their health.

- iii. The prospective adopters' social worker shall write to the applicants GP and referees prior to matching panel and the application for an adoption. A national template letter should be devised containing a safeguarding statement, explaining the importance of confidentiality, the relevance of the information and requesting if the GP and referees are aware of or becomes aware of any significant new information or changes since the last report that they should share with the adoption agency.
- iv. A national template should be devised for the format and content of the agency medical advisor's summary with the aim of providing consistency nationally.
- v. The child's social worker and the prospective adopters' social worker should confirm in Section B Part 1 (i) (m) and Section C Part 1(l) respectively that they have reviewed the medical advisor summary and addressed any identified concerns therein with the applicants that may impact on the proposed adoption.
- vi. A checklist should be prepared of the documents required to be placed before the ADM to be used in every case considered by ADM. The checklist together with the documents should be placed before the ADM when making best interests decision to approve a plan of adoption.
- vii. Local authorities should ensure it has mechanisms in place to ensure quality control and review by team managers and the agency adviser of the documents and checklist before submission to the ADM.
- viii. The mechanisms for quality control and review should reflect the ongoing duty of the Agency Adviser under 1.32 of the [English Statutory Guidance on Adoption 2013](#).

- ix. Local authorities should ensure they have in place mechanisms for notifying parents of the proposed ADM decision date. A template letter should be devised explaining the purpose and significance of the decision.
- x. Local authorities should ensure they have in place mechanisms for notifying parents of the outcome of the decision by use of a template letter to be devised.

Chapter 4: Adoption with an international element

Introduction

220. Our remit was to consider the current legal process for international adoptions (both incoming and outgoing) and whether reforms or changes should be recommended. It was agreed to consider not only procedure, but also the substantive law.
221. This report will consider the following issues:
- i. Whether the existing statutory framework is sufficiently clear;
 - ii. Whether there needs to be any changes to the rules or statutes;
 - iii. Whether specific guidance would be of assistance to support good practice amongst relevant professionals i.e., adoption panels, the judiciary, social workers etc.
222. This report is not intended as an exhaustive guide to the legal frameworks that apply in these contexts. This report seeks to:
- i. Highlight the case management issues that frequently arise in practice and how they can be navigated;
 - ii. Identify any further issues of concern, and whether there should be any changes to primary or secondary legislation.

International adoptions generally

223. For the purposes of this chapter, we classify international adoptions as including incoming and outgoing adoptions whether or not they come within the framework of the [1993 Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption](#) (“The Hague Convention”), Overseas adoptions as defined in [s66\(1\)\(d\) ACA 2002](#), applications for recognition of foreign adoptions at common law and/or under [s57 Family Law Act 1986](#), and

domestic applications for adoption with respect to children who are habitually resident overseas.

224. Every year children who cannot be cared for by their birth parents here are placed overseas, most commonly in situations following public law proceedings where suitable family members have been identified to care for them there. In this jurisdiction it is rare for adoption orders to be made in favour of wider family members, but when the placement is overseas adoption may be necessary to provide security and immigration status.

225. Likewise, there are a number of children who are brought into the UK for the purpose of adoption, whether this is because they have been removed from their birth parents by the authorities in their country of origin or because their parents have consented.

226. It is the experience of most practitioners that these cases are very complex to manage. This may be an inevitable consequence of the need to ensure that children are properly protected, but such complexity can lead to confusion and delay which can also be harmful. The purpose of this paper is to consider whether and how improvements to the process can be made.

Adoptions pursuant to the 1993 Convention

227. The [1993 Convention](#), to which the United Kingdom is a Contracting State, provides a comprehensive procedure for the placement of children overseas in another Contracting State. The process is set out in [AFER 2005](#). At the heart of the 1993 Convention is a partnership between the central authorities of the receiving state and the state of origin. The state of origin is responsible for assessing the availability and suitability of the **child** for a Convention Adoption and the receiving state is responsible for assessing the eligibility and suitability of the **adopters** to adopt under the convention. Both states are equally responsible

for the matching process and either state can veto the entrustment of the child with the prospective adopter following the exchange of reports.

228. It is a requirement that when a receiving state approves the match it must also confirm that, following the granting of the adoption order, the child will be allowed to enter and permanently remain within their jurisdiction. Ultimately, if both states approve the match and the Convention adoption order is made (which can be by a court in the state of origin or in the receiving state) all member states of the 1993 Convention (not just the receiving state and state of origin) must recognise and give effect to the order by operation of law as if it were an order made in their own jurisdiction. There is very little room for exception to that rule and there is no need to take any further steps such as registering the adoption in the foreign state, applying for a mirror order or seeking a declaration that the order should be recognised.

229. Following the making of a Convention adoption order (in a court of either the state of origin or the receiving state) the Central Authority in whose state the adoption order was made must provide a certificate under Article 23 of the **1993 Convention** which certifies the dates that **Article 17(c)** agreements were exchanged. Subject to the limited exceptions allowed by **Article 24**, this certificate binds all states who are members of the **1993 Convention** to recognise and give effect to the Convention Adoption order as though it were an order made in their own court.

230. In the UK the relevant central authority is the Department for Education ('DfE').

231. [The Adoption \(Intercountry Aspects\) Act 1999](#) provided that the Secretary of State could make provision for giving effect to the 1993 Convention by way of Regulations. The Adoption with a Foreign Element Regulations 2005 followed. Unfortunately for lawyers, AFER 2005 do not provide a one-stop shop of self-contained rules. Instead, they modify and supplement the existing legislative framework governing the adoption process that is otherwise contained in

Adoption and Children Act 2002 and Adoption Agency Regulations 2005. From one perspective this simplifies the process, which in essence follows the same fundamental route as a domestic adoption, with additions. However, for those unfamiliar with the process, cross referencing and making sense of the modified provisions can seem an overwhelming task.

232. Although the process is complicated and made more so by the need to cross reference the various regulations, it is very thorough and can be navigated by those with time and experience, and with the assistance of specialist lawyers. Local authorities do not always appreciate this and give cases such as this sufficient resources.

Outgoing Convention adoptions

233. Most children habitually resident in the UK who are placed abroad are looked after children and many are the subject of care proceedings. There is a duty on local authorities and the court to consider whether children who cannot be cared for by their birth parents can be placed with wider family. Where such family members live overseas there is a duty to assess them as potential carers if this is consistent with the child's welfare and especially if adoption is being considered. This will commence with a viability assessment to be followed by a more detailed assessment if the outcome is positive.

234. It is not within the remit of this report to look at the process for conducting assessments of family members abroad. This of itself can be a tricky process depending on the location and availability of suitable assessors. The organisation [CFAB](#) (Children and Families Across Borders) is the UK branch of the International Social Services network and can give advice and practical support to local authorities in such circumstances. The authors of this report have noted a reluctance on the part of some authorities to engage with the process in a timely way, usually because of the perceived complications. It is important to note that

while CFAB is able to assist with a viability assessment in a potential Convention adoption, the full adoption assessment will have to be undertaken by an adoption agency authorised by the Central Authority of the receiving state.

235. In many cases placements overseas will not involve consideration of adoption. There are others, however, where adoption is the order of choice, particularly when immigration status in the receiving state is dependent upon it. Adoption may also be preferable if other orders (for example such as special guardianship orders) do not have a direct equivalent in the receiving state and therefore cannot be enforced.

236. One particular difficulty with statutory framework is that it does not sit easily with the typical model for adoption in England and Wales of children who have been removed from their birth parents because of neglect or abuse. Nor does it sit easily with cases where there is nobody with parental responsibility, for example when the child's parent(s) have died. Article 4 of the 1993 Convention plainly envisages a situation where it is an institution or authority rather than a person whose consent is necessary for the adoption to take place and this means the local authority must obtain a placement order to authorise it to place the child for adoption under the Convention. Also, a child cannot be placed for adoption until the criteria in Article 17 of the Convention have been met (namely the Central Authorities of the state of origin and of the receiving state have agreed that the adoption may proceed and that the child will be authorised to enter and reside permanently in the receiving state).

237. Children in England and Wales will rarely be placed abroad for adoption unless it is to be with family members. Ideally those children would be placed within the family as soon as possible, not least to allow for the placement to be tested, but a combination of the requirements of the Convention, the legislation here and immigration laws in the receiving state can make it very difficult to do this. [Section 85 ACA 2002](#) makes it an offence to remove a child from the United Kingdom for

the purposes of adoption unless the prospective adopters have been granted parental responsibility pursuant to section 84. An application for an order under [section 84](#) cannot be made, however, unless the court is satisfied that sufficient opportunities to see the child with the applicant(s) together in the home environment have been given to the adoption agency or local authority within whose area the home is. In addition, if it is intended that the child will be adopted under the Convention in the receiving state it is still a requirement for both states to comply fully with the assessment and matching procedures governed by Articles 15, 16 and 17 of the Convention.

238. In the vast majority of cases, it will be in the interests of the child to obtain a Convention Adoption order in the English court. In *In re M (A Child) (Adoption: Placement outside Jurisdiction)* [2011] 2 WLR 1264, Hedley J held that since the child was not being removed to the receiving state for the purpose of adoption in that state, but rather to facilitate an English Convention adoption, an offence under s.85 ACA 2002 would not be committed.

Incoming Convention adoptions

239. The numbers of incoming convention adoptions every year are not large, and because the process of ensuring that the child or children are suitable to be adopted takes place in the state of origin the burden on the authorities here is somewhat less, being confined to assessments of the proposed adopters and approval of matching. It is the experience of the panel that adoption agencies do not always appreciate the complexity of the legal process if the adoption order is applied for here, and do not always instruct lawyers. If the prospective adopters have means and instruct lawyers this may not matter, but in many cases the adopters represent themselves. If there are procedural difficulties they may not be noticed until much later when the child is made a party and then represented.

This can lead to delays and can cause a great deal of anxiety to the families involved.

Non-Convention adoptions

Outgoing

240. The route by which prospective adopters can take children out of the United Kingdom for the purposes of adoption is by making an application for parental responsibility under s84 ACA. This will involve compliance with [Part 2 Chapter 2 of AFER](#), which serves to amend and supplement various provisions of the **AAR 2005 / AA(W)R 2005** and the **ACA 2002**. The granting of a **s.84** order will extinguish the parental responsibility of every other person and vest the prospective adopters with Parental Responsibility as well as authorising the removal of the child from this jurisdiction for the purpose of adoption overseas.
241. It will be necessary for the child to be placed with the prospective adopters to comply with the requirement that the child has their home with the adopters for a period of not less than 10 weeks before the application for a **s.84 ACA 2002** order is issued.
242. If the child is looked after by the local authority, permission to place them abroad can be sought under **paragraph 19 of [Schedule 2 to the Children Act 1989](#)**. What is less clear is whether permission can be granted under **[s.28 of the ACA 2022](#)** following the making of a Placement Order. There are currently no reported cases that address the answer to that question.
243. If the child is not looked after, then it is difficult for prospective adopters to comply with the requirement of s84 that the local authority in whose area the home is must have sufficient opportunity to see the adopters with the child in their home environment without falling foul of section 85 CA 1989. The home area will be overseas, but it is an offence to remove a child from the United Kingdom for the purposes of adoption unless the s84 order has already been made.

244. It is usually more straightforward to make orders pursuant to **Children Act 1989**, and to obtain mirror orders in the non-convention receiving state. The adopters may then seek to adopt the child in that state at a later stage if they wished to do so. If the receiving state is a party to the 1996 Hague Convention this is relatively simple. If not, it can become very complicated. There may also be difficulties with immigration status. The number of cases where these issues arise is very small, and therefore any ongoing difficulties have not attracted much attention.

Incoming

245. There are a significant number of applications for adoption of children from overseas, recognition of foreign adoptions and/or declarations pursuant to s57 made every year. These are sometimes heard in the High Court or in the Family Court by a High Court judge.

246. If the adoption is an overseas adoption within the meaning of s87(1) ACA, namely if before 3.1.14, under the law of a country listed in the [Adoption \(Designation of Overseas Adoptions\) Order 1973](#) (as amended) or if after 3.1.14 under the law of a country listed in the [Adoption \(Recognition of Overseas Adoptions\) Order 2013](#), then it is automatically recognised in England and Wales and there is no need for any proceedings.

247. If an adoption order is made outside the British Islands but is neither a Convention or an overseas adoption it may still be recognised according to common law principles following *Re Valentine's Settlement* [1965] Ch 831 and/or separately, through an application for declaratory relief pursuant to [s.57 Family Law Act 1986](#). Where the *Re Valentine's Settlement* criteria have not been met, the courts have, in limited instances, been prepared to recognise adoptions where not to do so would constitute a disproportionate interference in the Article 8 rights of the children and the prospective adopters. There are a number of reported judgments which are required reading to understand the legal and factual

complexities involved, especially where it has been difficult to obtain documents from overseas. It is clear from the judgments that in many cases the applicants are either not legally represented or represented pro bono. There is almost always legal representation for the child, which greatly assists the judge but the cases can be extremely difficult.

248. Where there are dual applications for recognition at common law and declarations of status pursuant to s57, the court has to grapple with the issue of domicile and the fact that the relevant date is different for each of these. For applications for recognition at common law the date is the date of the adoption. For a s57 it is the date of the application.

249. There are other cases where prospective adopters are resident in England and Wales and seek adoption here for children they have brought into the jurisdiction. Section 83 ACA makes it a criminal offence to bring a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption unless it is a Convention adoption or there has been compliance with the prescribed procedure pursuant to AFER 2005 (which requires a person intending to bring a child to the United Kingdom for the purposes of adoption to apply in writing to an adoption agency for an assessment of suitability). Whilst these cases may be factually complex, the court will apply domestic law and the assessments will take place here (*Re N (Adoption: Jurisdiction)* [2016] 1 FLR 621). It is worth noting that this case was the subject of an appeal to the Supreme Court but the dicta in relation to domestic adoptions of foreign national children was not disturbed). A breach of section 83 will not automatically mean that the court will refuse to make an adoption order; *Re WM (Adoption: Non-patrial)* [1997] 1 WLR 132.

250. It should be noted that the majority of applications to adopt from another country are compliant with the regulatory framework under AFER. As such these adopters will have been fully assessed and approved to adopt and given a

certificate of eligibility to adopt by the Department for Education. In addition, the match between the adopters and the child will have been approved by the local authority before the adopters meet the child and assume their care and the Department for Education will have confirmed that a visa for the child to enter the UK will be provided. Furthermore, if eligible under the regulations of the chosen State, the process for application, preparation, assessment and approval of prospective intercountry adopters is often almost identical to domestic applications.

251. However, despite the lengthy and complex pre-approval status inherent in the AFER regulations, currently there is no recognition of this special 'pre-approval' status at the visa application stage once a child has been placed or adopted in the State of origin. This systemic failure to promptly process the visa application to enable the child to enter the UK and begin their lives with their newly adopted parents - which for the child and the adopters is the most important stage of the process – is lamentable. There are countless examples of unnecessary and complex delays to what should be straightforward visa applications, given the status of the adoptive parents and the child, who is already deemed vulnerable. These delays can cause unnecessary emotional and financial hardship on the adopters which is not in the best interest of the child.

252. It is therefore recommended that policy makers review their guidelines and put in place processes which enable approved adopters who are issued a Certificate of Eligibility by the Department for Education, to have special status with the Home Office at the visa application stage in order to ensure this category of visa is expedited. The usual checks and balances should continue to be applied on the basis that such cases fast-tracked, to enable the child to come to the UK without further delay, it being the case that this delay – which in some cases separates children from their parents for sometimes over year is harmful and should be eliminated.

Conclusions

253. The current system is just about working but the sheer complexity of it is illustrated by the number of statutes and statutory instruments which govern the process in England namely:

- i. Adoption (Intercountry Aspects) Act 1999;
- ii. Adoption and Children Act 2002;
- iii. Children and Adoption Act 2006;
- iv. Family Law Act 1986 (s.57);
- v. Family Procedure Rules 2010 rr 8.18 and Part 14;
- vi. Adoption with a Foreign Element Regulations 2005;
- vii. Adopted Children and Adopted Contact Regulations 2005;
- viii. Adoption (Designation of Overseas Adoptions) Order 1973;
- ix. Adoption (Designation of Overseas Adoptions) Order 2013;
- x. Adoption Agencies Regulations 2005;
- xi. Suitability of Adopters Regulations 2005;
- xii. Restriction on the Preparation of Adoption Reports Regulations 2005;
- xiii. Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) Regulations 2008 (and successors);
- xiv. Special Restrictions on Adoptions from Abroad; various orders which are set out in government guidance from the DfE entitled 'Adoptions; Restricted List'.

254. Adoption is a devolved matter so that any case with a Welsh dimension is covered by Welsh legislation namely:

- i. Adoption Agencies (Wales) Regulations 2005;
- ii. Adoption Support Agencies (Wales) Regulations 2005;
- iii. Adoption Information Intermediary Services (Pre-Commencement Adoptions) (Wales) Regulations 2005 ;
- iv. Adoption Agencies (Wales)(Amendment) Regulations 2005, 2012 and 2014.

255. This complexity leads to misunderstanding, delays and mistakes to the detriment of children. The overarching recommendation of the international adoption sub group is therefore that the statutory framework for all international adoptions should be rewritten so that they are contained in one single Act of Parliament and subsidiary regulations. The regulations should be drafted so that they can be understood and applied without the need to cross reference them with other regulations. This would render everything much more accessible and comprehensible to all concerned, both lawyers and professionals involved in assessing families and making recommendations. We recognise, however that this will be a major task and will not happen overnight. Pending such a wholesale overhaul of the legislation we make the following recommendations:

- i. The Department for Education and Welsh Government should update and expand written guidance for intercountry adoptions of all types. This should draw together in one place all the statutes and regulations that are relevant to international adoptions. The government(s) should also consider setting up a specialist referral unit for international adoptions which do not come within the 1993 Conventions. There should be close communication between the DfE/Welsh Government and the Home Office when such applications will be relevant to decisions concerning immigration status.
- ii. There should be amendments to the legislation in relation to s84 ACA 2002 so as to make it explicit that prospective adopters may be assessed in their home environment without committing an offence under s85.
- iii. The regulations should be reviewed for inconsistencies identified from practice. For example **reg.46 of AFER**, which deals with the preparation of the Article 16 Report by local authorities, requires the local authority to provide the Central Authority with both a Placement Order **AND** parental consent. In England and Wales when a child is subject to a Placement Order, the local authority is authorised to place the child for adoption without parental consent.

Accordingly, the practice has developed where only one of these documents is required to evidence the child's availability for adoption within the Article 16 Report – but this is contrary to the regulation as drafted.

- iv. Regulation 47(1)(d) AFER should be amended to include the following wording in square brackets: "*(d) in the case where a Convention adoption is to be effected, [IN THE RECEIVING STATE,] it has explained to the prospective adopter the need to make an application under section 84(1) of the Act; and...*". The current requirement in **reg. 47(1) of AFER** that, **before** the relevant UK Central Authority can give their consent under **Art.17(c) of the 1993 Convention** to the adoption proceeding, the adopters have to be advised about the need to apply for a **s.84** order is confusing in circumstances when the plan to secure a Convention Adoption order in England and Wales.
- v. Practice direction(s) should be drafted to govern the process of applying for leave under **paragraph 19 of Schedule 2 to Children Act 1989** and/or applications for leave under **s.28 ACA 2002**. These could stipulate the evidence that should be provided in support of such applications and provide for the carers to give undertakings to return the child when certain conditions are met and in any event by the date that the permission expires.
- vi. Cafcass Legal often provide the only lawyers in proceedings and as such they provide a vital source of expertise for judges. They must be given sufficient resources to allow them to continue to advise in these complex cases.
- vii. The Home Office should review its procedures to create a fast tracked process for visa approval in cases where the applicants have demonstrated full compliance with the relevant regulations under AFER for bringing a child in to the jurisdiction pursuant to s.83.

Chapter 5: Adoption by consent

Introduction

256. The 1926 Adoption Act enabled a baby who was to be cared for by those who were not his birth parents to acquire a legitimate status through the making of an adoption order. The child would then be raised as though s/he was born to the adopters. While the Act was significant in enabling the resolution of the child's status in law, the court also had a duty to ensure that this was based on informed consent, explicitly focussed on the welfare of the child and with the prohibition of any financial or other reward:

- i. *That every person whose consent is necessary under this Act and whose consent is not dispensed with has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental right (S3(a)).*
- ii. *That the order is made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant (S3(b)).*
- iii. *That the applicant has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant, any payment or as a reward in consideration of the adoption except such as the court may sanction (S3c)).*

257. While the Act undoubtedly had a significant impact in increasing the number of children who were adopted, the issues that reinforced the moral condemnation of women who became pregnant out of wedlock continued to be powerful. There were then no social measures in place that supported those women or children – finance, housing and other forms of support alongside the issues of societal and moral condemnation.

258. These issues were reviewed by the Joint Parliamentary Committee on Human Rights for the years 1949-1976, culminating in a [report](#) published in July 2022 entitled 'The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976'³². The Inquiry resulted from the testimonies of women whose lives had been deeply affected and damaged by the pressures placed on them by family, adoption agencies and professionals to 'give up their baby' for adoption. This evidence demonstrates that although the requirement for obtaining consent as set out in law was clearly stated, in practice many women felt they did not have any choice at all.

259. As society changed and there was more support available for single parents and in turn less pressure for women to give up their babies for adoption, the number of children adopted fell from a high of about 24,000 in the 1960s to below 10,000 by the 1980s. There was a change with more children being adopted from care. As the statistics for the adoption of children from care do not reveal whether those children have been the subject of care proceedings or not, it is difficult to be accurate about the numbers. The number of children being adopted from care rose throughout the 2000s to a high of 5360 in [2015](#)³³. Thereafter the numbers have reduced and continue to fall.

260. In 2022 the number of children adopted from care in England was 2,950. The numbers have been affected by a range of factors including the Supreme Court case of *Re B* [2013] UKSC 33 and the Court of Appeal case of *Re B-S (Children)* [2013] EWCA Civ 1146. The phrase in the judgment that received the sector's attention was that adoption is the 'last resort' and only allowed 'where nothing else will do' - raising the bar in the argument that all other options about the child's future had been explored and examined. There has been a corresponding rise in

³² <https://committees.parliament.uk/publications/23076/documents/169043/default/>

³³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/556331/SFR41_2016_Text.pdf

the number of special guardianship orders but these orders are not relevant for the purpose of this part of the report.

261. Although the numbers are not large, there remain a steady number of cases where birth mothers (sometimes supported by the birth father) seek to relinquish the baby for adoption at birth. A number of these cases involve families who are foreign nationals.

262. Adoption by consent has become a marginal issue for policy and practice which has focussed primarily on adoption as an option when the child would be at risk of significant harm in the care of the parents. The subgroup was formed to explore current policy, practice and the adequacy of the system in responding to the challenge and complexity that an 'unplanned for' pregnancy can create for the mother and other relevant people such as the birth father.

Legal framework

263. [S 19 Adoption and Children Act 2002](#) sets out the process of placing children for adoption with parental consent'.

(1) Where the adoption agency is satisfied that each parent or guardian has given their informed consent to the child -

(a) being placed for adoption with prospective adopters who are identified in the consent document, or

(b) being placed for adoption with any prospective adopters who may be agreed by the adoption agency, and has not withdrawn their consent, the agency is authorised to place the child for adoption accordingly.

264. Whenever a court or adoption agency is coming to a decision relating to the adoption of a child, section 1(2) and (4) apply. S1(2) is the paramountcy of the child's welfare throughout his life, and s 1(4) the adoption welfare checklist.

Role of the adoption agency

265. The Adoption and Children Act 2002 together with, in England, the Adoption Agencies Regulations (2005) and the Adoption Statutory Guidance (2013) make specific provision for cases where one or both parents is seeking to relinquish their baby for adoption. If a birth mother (and father where this is agreed by the birth mother) approaches an adoption agency where she is thinking about adoption, then the adoption agency must provide her with pre-birth counselling to explore the various options open to her in coming to a decision about the adoption and the consequences for the child both now and in the future. It is also important to note that the birth father should be informed about the possibility of him acquiring parental responsibility for the child under [section 4 of the Children Act 1989](#), [AAR Regulation 14\(4\)\(b\)\(1\)](#).
266. A referral to the adoption agency can be made by:
- i. the mother directly contacting the adoption agency to state her position in giving birth to her baby and her wish that the baby should be adopted,
 - ii. the hospital who provided health services to the pregnant woman,
 - iii. a family member or member of the community.
267. Some mothers who decide to relinquish their babies engage with the process of agency decision making. Others feel unable to do so. There are situations where mothers leave hospital alone and avoid contact with all agencies.
268. It is important that the mother has accessible and helpful information that enables her to make contact with the adoption agency. The most important access point in the current age is probably via the internet. There are agencies such as [CoramBAAF](#) and [Childline](#) which have straightforward information available on their web pages. So does [Cafcass](#). All these agencies signpost the reader to further information and assistance, including to relevant adoption agencies.

269. When agreed through the first point of contact, it is important that the agency's provision of pre-birth counselling recognises the likely challenge and complexity in exploring the issues for the mother (and father) and the baby. This requires both experience and expertise and time and resources from the professional providing that counselling as well as sufficient support being available to the professional to ensure the highest quality of practice in enabling these life changing decisions.

270. The re-structuring of adoption services in England means that there are now a number of regional adoption agencies ("RAA") organised in different ways, including how they link to the local authorities who deliver children's services. There are parallel issues in Wales with the National Adoption Service.³⁴ This has led to some uncertainty in England as to who is responsible for delivering specific adoption services. Parents and families may not be clear who to contact when a specific issue needs to be explored. It is vital that there is an explicit arrangement between the local authorities and the relevant RAA in England as to the division of responsibilities, including the provision of services and contact details for families. Time is of the essence when a pregnant woman approaches the agency for advice, counselling and support.

271. In 2021 214,869 terminations were carried out in England and Wales, the highest since records began. The rates for those under 18 have declined but risen for older women. The highest rates are for women in their early twenties. It is the experience of professionals involved in relinquished baby cases that many mothers seeking adoption for their babies did not realise they were pregnant until late in the pregnancy. Many are in an extreme state of distress. As Holman J stated in *Z County Council v R* [2001] 1 FLR 365, "*The dilemma must, in fact, be a very old one. Although no statistics are available, many children must have been*

³⁴ <https://www.adoptcymru.com/about-nas>

adopted over the years, outside their birth families, and with no knowledge by, or investigation of, other members of the birth family. Adoption exists to serve many social needs. But high among them has been, historically, the desire or need of some mothers to be able to conceal from their own family and friends, the fact of the pregnancy and birth. So far as I know, it has not previously been suggested, nor judicially determined, that that confidentiality of the mother cannot be respected and maintained. If it is now to be eroded, there is, in my judgment, a real risk that more pregnant women would seek abortions or give birth secretly, to the risk of both themselves and their babies... There is, in my judgment, a strong social need, if it is lawful, to continue to enable some mothers, such as this mother, to make discreet, dignified and humane arrangements for the birth and subsequent adoption of their babies, without their families knowing anything about it, if the mother, for good reason, so wishes."

272. In 2021 the Court of Appeal considered the issue of notification of fathers and relatives in cases where a mother had expressed a wish for the child to be adopted. In *Re A, B and C (Notification of Fathers and Relatives)* [2020] EWCA Civ 41, Peter Jackson LJ reached the following conclusions (at paragraph 89 of the judgment) after considering all of the previous case law:

"The principles governing decisions (by local authorities as adoption agencies or by the court) as to whether a putative father or a relative should be informed of the existence of a child who might be adopted can be summarised in this way.

- 1. The law allows for 'fast-track' adoption with the consent of all those with parental responsibility, so in some cases the mother alone. Where she opposes notification being given to the child's father or relatives her right to respect for her private life is engaged and can only be infringed where it is necessary to do so to protect the interests of others.*
- 2. The profound importance of the adoption decision for the child and potentially for other family members is clearly capable of supplying a justification for*

overriding the mother's request. Whether it does so will depend upon the individual circumstances of the case.

3. *The decision should be prioritised and the process characterised by urgency and thoroughness.*
4. *The decision-maker's first task is to establish the facts as clearly as possible, mindful of the often limited and one-sided nature of the information available. The confidential relinquishment of a child for adoption is an unusual event and the reasons for it must be respectfully scrutinised so that the interests of others are protected. In fairness to those other individuals, the account that is given by the person seeking confidentiality cannot be taken at face value. All information that can be discovered without compromising confidentiality should therefore be gathered and a first-hand account from the person seeking confidentiality will normally be sought. The investigation should enable broad conclusions to be drawn about the relative weight to be given to the factors that must inform the decision.*
5. *Once the facts have been investigated the task is to strike a fair balance between the various interests involved. The welfare of the child is an important factor but it is not the paramount consideration.*
6. *There is no single test for distinguishing between cases in which notification should and should not be given but the case law shows that these factors will be relevant when reaching a decision:*
 - a. *Parental responsibility. The fact that a father has parental responsibility by marriage or otherwise entitles him to give or withhold consent to adoption and gives him automatic party status in any proceedings that might lead to adoption. Compelling reasons are therefore required before the withholding of notification can be justified.*
 - b. *Article 8 rights. Whether the father, married or unmarried, or the relative have an established or potential family life with the mother or the child,*

the right to a fair hearing is engaged and strong reasons are required before the withholding of notification can be justified.

- c. The substance of the relationships. Aside from the presence or absence of parental responsibility and of family life rights, an assessment must be made of the substance of the relationship between the parents, the circumstances of the conception, and the significance of relatives. The purpose is to ensure that those who are necessarily silent are given a notional voice so as to identify the possible strengths and weaknesses of any argument that they might make. Put another way, with what degree of objective justification might such a person complain if they later discovered they had been excluded from the decision? The answer will differ as between a father with whom the mother has had a fleeting encounter and one with whom she has had a substantial relationship, and as between members of the extended family who are close to the parents and those who are more distant.*
- d. The likelihood of a family placement being a realistic alternative to adoption. This is of particular importance to the child's lifelong welfare as it may determine whether or not adoption is necessary. An objective view, going beyond the say-so of the person seeking confidentiality, should be taken about whether a family member may or may not be a potential carer. Where a family placement is unlikely to be worth investigating or where notification may cause significant harm to those notified, this factor will speak in favour of maintaining confidentiality; anything less than that and it will point the other way.*
- e. The physical, psychological or social impact on the mother or on others of notification being given. Where this would be severe, for example because of fear arising from rape or violence, or because of possible consequences such as ostracism or family breakdown, or because of*

significant mental health vulnerability, these must weigh heavily in the balancing exercise. On the other hand, excessive weight should not be given to short term difficulties and to less serious situations involving embarrassment or social unpleasantness, otherwise the mother's wish would always prevail at the expense of other interests.

- f. Cultural and religious factors. The conception and concealed pregnancy may give rise to particular difficulties in some cultural and religious contexts. These may enhance the risks of notification, but they may also mean that the possibility of maintaining the birth tie through a family placement is of particular importance for the child.*
- g. The availability and durability of the confidential information. Notification can only take place if there is someone to notify. In cases where a mother declines to identify a father she may face persuasion, if that is thought appropriate, but she cannot be coerced. In some cases the available information may mean that the father is identifiable, and maternal relatives may also be identifiable. The extent to which identifying information is pursued is a matter of judgement. Conversely, there will be cases where it is necessary to consider whether any confidentiality is likely to endure. In the modern world secrets are increasingly difficult to keep and the consequences, particularly for the child and any prospective adopters, of the child's existence being concealed but becoming known to family members later on, sometimes as a result of disclosure by the person seeking confidentiality, should be borne in mind.*
- h. The impact of delay. A decision to apply to court and thereafter any decision to notify will inevitably postpone to some extent the time when the child's permanent placement can be confirmed. In most cases, the importance of the issues means that the delay cannot be a predominant*

factor. There may however be circumstances where delay would have particularly damaging consequences for the mother or for the child; for example, it would undoubtedly need to be taken into account if it would lead to the withdrawal of the child's established carers or to the loss of an especially suitable adoptive placement.

- i. *Any other relevant matters. The list of relevant factors is not closed. Mothers may have many reasons for wishing to maintain confidentiality and there may be a wide range of implications for the child, the father and for other relatives. All relevant matters must be considered."*

273. For recent examples of the application of these principles, see *A Local Authority v JK* [2021] EWHC 33 (Fam) (Peel J) (notification authorised), and *The Prospective Adopters v Mother* [2021] EWHC 91 (Fam) (Lieven J) and *Re F (Assessment of Birth Family)* [2021] EWFC 31 (Cobb J) (in both cases notification refused).

274. Notwithstanding the guidance there continue to be examples in the case law where the correct procedures have not been applied, so that the decision as to whether fathers and/or other birth relatives should be notified are not taken until some months after the birth of the baby. One example is provided by the case of *A Local Authority v C, M and The Prospective Adopters* [2023] EWFC 17. By the time of the judgment, in which the judge concluded that the birth father should be informed, the child concerned was 20 months old and had been with the prospective adopters since he was a day old. In her judgment the judge noted that the consequences of the issue being raised so late was that all the parties felt profoundly let down and the prospective adopters had lost trust in the local authority. They were bewildered that their application for adoption, which they had been led to believe was straightforward, had developed into something so complex and stressful.

275. The local authority in that case pledged to carry out a full review of what had happened in the case and to learn lessons. The judge also suggested that Cafcass might need to review the instructions given to the officer asked to witness the signing of the section 19 and 20 consent forms.

276. In these cases, the path is difficult for all professionals to tread. On the one hand the best interests of children requires that a rigorous analysis of the competing options for their long-term placement is undertaken. On the other hand, placement with a family member in circumstances where a birth mother wishes the baby to be adopted can raise a number of difficult long term welfare issues. Also, there is a risk that pregnant women who face very high hurdles in placing the baby for adoption may choose not to cooperate with the local authority or worse still to give birth in secret.

The role of Cafcass and Cafcass Cymru

277. Cafcass and Cafcass Cymru play a very significant role in adoption by consent. Joint practice guidance is available from Cafcass and the [Association of Directors of Children's Services](#)³⁵ that sets out due process including the forms that comply with the law and regulations³⁶. Annex 4 sets out information for birth parents which runs through the various steps or issues that need to be addressed in reaching both a decision about the baby's future and ensuring that if that is the decision, then it is fully and lawfully implemented with some of the longer-term issues or consequences fully addressed. This includes:

- i. A set of materials that sets out and describes for the child the origins including their family life history;
 - Arrangements for the timely exchange of information with the adopter and child,

³⁵ <https://www.cafcass.gov.uk/about-cafcass/policies/cafcass-policies/>

³⁶ The guidance is specific to England. During the timescale for the review, CAF/CASS Cymru was revising its own guidance.

- The possibility of an agreed arrangement for the relationship between the birth parents, the child and the adoptive family to continue.

The National Adoption Service for Wales, CAFCASS Cymru and the Association of Directors of [Social Services Cymru](#) also publishes its Practice Guidance.³⁷

Legal advice

278. Birth parents considering adoption, need to have access to independent legal advice in order to fully understand their rights and options, including the short and long-term consequences for them and their child (and indeed other children that they may have). For those unable to pay, public funding is very restricted however, costs can be covered by the Regional Adoption Agency or local authority. Parents and families can also be directed to [Family Rights Group's](#) free advice line.³⁸

Recommendations

279. It is vital that decision making in consent cases is properly informed and must not be allowed to drift, so as to avoid later difficulties. Accordingly, there must be focussed training for adoption social workers and Cafcass officers to deal with relinquishment cases, including international cases. As the numbers are low, individual agencies and social workers have very limited opportunities to build expertise. It is recommended that the National Adoption Service in Wales, the Regional Adoption Agencies in England and Cafcass and Cafcass Cymru should develop a strategy for such cases, including training. Each agency needs to establish a plan that ensures all who deal with these cases are fully up to date with policy, the law and the availability of local resources. The cases raise many

³⁷ https://www.adoptcymru.com/home.php?_dds=true&fileID=575&inline=true

³⁸ [Family Rights Group's advice services details can be found on the website \(www.frg.org.uk\)](#) or callers can ring the free service on 0808 801 0366 (Mon-Friday 9.30am-3pm, excluding Bank Holidays)

different issues requiring the greatest of sensitivity and resources need to be directed accordingly.

280. If possible, there needs to be a pre-birth plan, which may include the need to make any applications to court at the earliest stage. Cafcass should be informed as early as possible.
281. Early permanence placements should be considered for all babies relinquished at birth.
282. Regional hubs should be created to provide information and expertise to birth parents and support should be provided over the longer term as a part of the adoption agencies support service as set out in the Adoption Support Regulations. This should include (if appropriate) opportunities to build and maintain relationships between the child, the adopters and the birth parents and other related matters such as accessing birth records.
283. The consent forms to be signed by the birth mother and father, where appropriate, should be reviewed to ensure that they are as straightforward and clear as possible.
284. Public funding for legal advice and representation should be available for birth parents who are considering relinquishing their baby for adoption. This should be available before and after the birth.

Conclusion

285. Adoption by consent may often appear to be a minority issue in the context of the adoption of children from care. While the circumstances of the adoption may be different, they are both life changing processes for the child, the child's parents and other family members and others. Every one of these individuals will be faced with a range of powerful emotions, confusion, conflict and uncertainty. Specialist services should be in place that can respond to all their needs, and that sensitive, timely, supportive, and accessible.

Conclusion

286. The adoption sub-group of the Public Law Working Group is considering commending the recommendations contained in this report to the President of the Family Division, but first invites comments from all those who have experience of adoption, whether as a professional or personally.
287. Once the consultation process has concluded we will collate the responses and consider whether to change or expand the recommendations. We will also consider implementation which can be achieved without recourse to amendment to primary or secondary legislation.
288. We believe that these recommendations will make a real difference to the process of making placement and adoption applications, and to adoptive and birth families in the future. We recognise that it will not be possible for all adopted children and adults to have contact with their families of origin, and for those who do not it will not always be a positive experience. Nonetheless the research that has been carried out points strongly in the direction of greater openness and access to records as long as it is safe for the individuals concerned. We consider that it is vital that we listen and respond.
289. Once again we would like to extend our thanks to all those who have assisted in the preparation of this report and advising the group.

Appendix A: membership of the adoption sub-group of the PLWG

The Hon. Mr Justice Keehan, High Court Judge (Chair of the Public Law Working Group)

The Hon. Mrs Justice Judd, High Court Judge (Chair of the adoption sub-group)

Alan Inglis, Barrister and Advocate

Alexander Laing, Barrister (Secretary to the Public Law Working Group)

Alice Smith

Ana Popa

Anne Brown

Caroline Lynch, Principal Legal Adviser, Family Rights Group

Cathy Ashley OBE, Chief Executive, Family Rights Group

Denise Gilling KC, Barrister

Edwina Grant

Elsbeth Neil, Professor of Social Work, University of East Anglia

Emma Petty, Family Public Law and Adoption Service Manager, Ministry of Justice

Helen Lincoln, Executive Director, Children, Families & Education, Essex County Council

Dr John Simmonds OBE, Director of Policy, Research and Development, Coram BAAF

Julie Selwyn, Professor of Education & Adoption, University of Oxford

Kambiz Moradifar, Designated Family Judge for the Thames Valley

Kate Hughes KC, Barrister

Kate Thomas, Head of Operations, Cafcass Cymru

Louise Murphy

Lucy Moore, Directorate Lawyer at City and County of Swansea

Martin Kelly, Assistant Director – North Yorkshire County Council Children and Families Service

Moira Smyth KC, Chair of the Bar of Northern Ireland

Naomi Angell, Consultant Solicitor

Natasha Watson, Principal Lawyer, Safeguarding and Litigation, Brighton and Hove Council

Pam Ledward

Peter Selman, Visiting Fellow, School of Geography, Politics & Sociology, Newcastle University

Rachel Hudson, Designated Family Judge for Northumbria and North Durham

Ruth Cabeza, Barrister

Sarah Johal MBE, National Adoption Strategic Lead, National Adoption Team

Sarah Richardson, Partner Solicitor

Satwinder Sandhu, CEO, Intercountry Adoption Centre

Sharon Segal, Barrister

Sheila Harvey JP, Magistrate, Greater London Family Panel

Stephen Gailey, Retired District Judge

Suzanne Griffiths, Director of the National Adoption Service for Wales and Foster Wales

Tanya Evans

Tracey Dunning, Senior Policy Manager, Social Services & Integration, Welsh Government

Appendix B: membership of each chapter

Chapter 1

Kate Hughes KC (Chair)

Alice Smith

Cathy Ashley

Elsbeth Neil

Julie Selwyn

Kate Thomas

Louise Murphy

Moira Smyth KC

Pam Ledward

Sharon Segal

Tracey Dunning

Chapter 2

Rachel Hudson (Chair)

Matthew Brazier

Alexandra Conroy Harris

Stephanie Evans

Suzanne Griffiths

Joanne McGuinness

Jean Milsted

Chapter 3

Stephen Gailey (Chair)

Ana Popa

Anne Brown

Edwina Grant

Emma Petty

Kambiz Moradifar

Lucy Moore

Sarah Richardson

Sheila Harvey

Suzanne Griffiths

Tanya Evans

Chapter 4

Ruth Cabeza (Chair)

Alan Inglis

Alexander Laing

Helen Lincoln

Naomi Angell

Natasha Watson

Peter Selman

Satwinder Sandhu

Chapter 5

John Simmonds (Chair)

Caroline Lynch

Denise Gilling KC

Martin Kelly

Kate Thomas

Public Law Working Group

Recommendations for best practice in respect of adoption: interim report

September 2023

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